

Lake Superior State University  
Sex- and Gender-Based Discrimination and Sexual Misconduct Policy  
Policy Number: 1.5.2  
Date of Present Issue: July 2019  
Dates of Previous Issue: August 2017; August 31, 2018

## **I. Policy Statement**

Lake Superior State University prohibits discrimination and harassment on the basis of sex. This Policy is intended to define community expectations for an educational and working environment free from sex- and gender-based discrimination and sexual misconduct. It establishes the University's procedures for determining when those expectations have been violated and, if so, what sanctions are appropriate. The University is committed to providing safe opportunities to report concerns and participate in investigations without retaliation, and it will take appropriate action to eliminate discrimination or harassment, prevent its recurrence, and remedy its effects.

## **II. Notice of Non-Discrimination and Designation of Title IX Coordinator**

Lake Superior State University does not discriminate on the basis of race, color, national origin, sex, disability, or age. Protected traits other than sex, gender, gender identity, gender expression, and sexual orientation are addressed in Policy 1.5.4. The University has designated Wendy Beach as its Title IX Coordinator to handle complaints and inquiries regarding non-discrimination policies.

Wendy Beach can be reached at (906) 635-2213 or via email at [wbeach1@lssu.edu](mailto:wbeach1@lssu.edu). Her office is located at 650 W. Easterday Ave., Administration Building, Room 212, Sault Ste. Marie, MI 49783. Any responsibilities assigned to the Title IX Coordinator in this Policy may be delegated to a designee.

Complaints concerning the application of Title IX may be referred to the University's Title IX Coordinator and/or the following:

U.S. Department of Education, Office for Civil Rights  
400 Maryland Avenue, SW  
Washington DC 20202-1100  
(800) 421-3481  
FAX (202) 453-6012  
TDD (800) 877-8339  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Michigan Department of Civil Rights, Marquette Office  
234 W. Baraga Avenue  
Marquette, MI 49855  
(906) 226-6393  
FAX (906) 226-3974

Equal Employment Opportunity Commission (EEOC)  
Detroit Field Office  
477 Michigan Avenue, Room 865  
Detroit, MI 48226  
(800) 669-4000  
FAX (313) 226-4610  
TDD (800) 669-6820  
Emergencies should be reported to Public Safety at (906) 635-2100 or by calling 911.

### **III. Scope of Policy**

#### **A. To Whom Does This Policy Apply?**

This Policy applies to all Lake Superior State University students, faculty, staff, administrators, board members, consultants, vendors, others engaged to do business with the University, guests, and visitors (collectively or individually referred to as “covered individuals”). The policy also applies to other third parties under circumstances within the University’s control.

For purposes of this Policy, the term student or students includes all persons taking one or more courses at Lake Superior State University. This includes both full-time and part-time students taking undergraduate, graduate, professional studies, or continuing education courses. Anyone who withdraws from the University after being notified of an alleged violation of this Policy is still considered a student for purposes of this Policy. Likewise, a student who is not officially enrolled for a particular term is still considered a student as long as the student has not officially withdrawn. For example, a student who is on a summer break or a student on a leave of absence remains identified as a student under this Policy.

#### **B. When Does This Policy Apply?**

This Policy applies to Prohibited Conduct, defined below, that (1) takes place on any LSSU campus or LSSU location; (2) takes place in the context of any educational program or any activity supported by or sponsored by the University, regardless of location; (3) takes place in the context of any service learning activities, study abroad programs, internship programs, or community programs in which the University participates; (4) takes place between persons where either the reporting party or responding party are members of the LSSU community, regardless of location; or (5) takes place off-campus when the conduct has continuing adverse effects on any person’s participation in any on campus or off-campus education program or activity.

This Policy may be applied to conduct that takes place from the time a person applies for admission as a student and continues while the person maintains a continuing relationship with the University as a student, including semester breaks and the periods between semesters. For faculty, staff, administrators, and other non-student covered individuals, this Policy may be applied to conduct that takes place from the time the person accepts employment at the University, or initiates a relationship with the University, and continues as long as the individual

maintains that relationship with the University. This Policy covers conduct that occurs during the time a person has a relationship with the University, and is applicable even if a report or allegation is filed after a person leaves or severs their relationship with the University, so long as the reported violation occurred during the time the responding party had a relationship with the University. For example, if a student transfers to another university or if an employee resigns, any allegation of misconduct reported for behavior while that person was with the University continues to be covered by this Policy.

#### **IV. Prohibited Conduct**

Prohibited Conduct includes sex- and gender based discrimination, sex- and gender-based harassment, sexual harassment, non-consensual sexual intercourse, non-consensual sexual contact, sexual exploitation, stalking, intimate partner violence, retaliation, and prohibited relationships by persons in authority. Prohibited Conduct may take place in person, online, or through any other form of technology or method of communication. Threats or failed attempts to commit any Prohibited Conduct will be treated as though the misconduct had occurred.

A preponderance of the evidence standard is used to determine whether Prohibited Conduct occurred. Preponderance of the evidence means that it is more likely than not that the conduct occurred.

##### **A. Sex-Based or Gender-Based Discrimination**

Sex-Based or Gender-Based Discrimination is discrimination on the basis of an individual's actual or perceived sex, gender, gender identity, marital status, pregnancy, or sexual orientation. Discrimination is treating an individual differently based on one of these traits; denying any individual access to an aid, benefit, or service based on one of these traits; or subjecting any individual to separate or different rules of behavior based on one of these traits.

Discrimination on the basis of sex/gender in employment is permissible in situations where sex/gender is a bona fide occupational qualification reasonably necessary to the normal operation of the University. Note that the federal regulations regarding Title IX include certain exceptions, such as single-gender housing, athletic participation and chorus participation, that do not constitute Sex-Based or Gender-Based Discrimination. These limited permissible exceptions, found in Title 34 of the Code of Federal Regulations, Part 106, will be considered when determining whether Prohibited Conduct occurred under this policy.

##### **B. Sex-Based or Gender-Based Harassment**

Sex-Based or Gender-Based Harassment is unwelcome conduct on the basis of sex or gender where one or more of the following conditions is present:

- Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a University program or activity; or

- Submission to or rejection of such conduct is used as a basis for decisions affecting the individual; or
- Such conduct is sufficiently severe, persistent, or pervasive as to create an intimidating, hostile, humiliating, demeaning, or offensive working, academic, residential, or social environment under both a subjective and objective standard. A single, isolated incident of harassment may create such an environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a pattern or a repetitive series of incidents.

### C. Sexual Harassment

Sexual Harassment is unwelcome conduct of a sexual nature where one or more of the following conditions is present:

- Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a University program or activity; or
- Submission to or rejection of such conduct is used as a basis for decisions affecting the individual; or
- Such conduct is sufficiently severe, persistent, or pervasive as to create an intimidating, hostile, humiliating, demeaning, or offensive working, academic, residential, or social environment under both a subjective and objective standard. A single, isolated incident of harassment may create such an environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a pattern or a repetitive series of incidents.

### D. Non-Consensual Sexual Intercourse

Non-Consensual Sexual Intercourse includes having or attempting to have sexual intercourse with another individual without consent. Sexual intercourse includes oral, vaginal, or anal penetration, however slight, with a body part (e.g. penis, tongue, finger, hand) or object. Sexual intercourse also includes mouth to genital contact or mouth to anus contact.

### E. Non-Consensual Sexual Contact

Non-Consensual Sexual Contact includes having sexual, intimate, or socially unacceptable contact with another individual without consent. For example, sexual contact includes, but is not limited to, touching the intimate parts of another, causing another to touch one's intimate parts, exposing another's intimate parts, or other contact of a sexual or intimate nature. Intimate parts may include the breasts, genitals, buttocks, groin, mouth, legs, back, or any other part of the body that is touched in a sexual or socially unacceptable manner.

### F. Sexual Exploitation

Sexual Exploitation is taking non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to:

- Surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved
- Non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved
- Exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances
- Knowingly exposing another individual to a sexual transmitted infection or virus without their knowledge
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity
- Non-consensual recording of individuals in places in which they have a reasonable expectation of privacy, such as locker rooms or bathrooms, regardless of whether the images captured reveal sexual activity or nudity
- Removal of a condom, without consent, during intercourse

#### G. Stalking

Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to either:

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress.

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

"Reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.

"Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

#### H. Intimate Partner Violence

Intimate Partner Violence includes dating violence and domestic violence. It includes threats of sexual or physical abuse towards the intimate partner or the intimate partner's family members, friends, or pets. It does not include violence between roommates that do not have the sort of romantic, intimate, or spousal relationship outlined below.

Dating Violence 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. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse, or the threat of such abuse.

Domestic Violence is a felony or misdemeanor crime of violence committed by:

- A current or former spouse or intimate partner of the victim
- By a person with whom the victim shares a child in common
- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner
- By a person similarly situated to a spouse of the victim
- By any other person against an adult or youth victim who is protected from that person's acts by the domestic violence laws of the jurisdiction in which the crime of violence occurred.

#### I. Retaliation

Retaliation includes threats, harassment, intimidation, abuse, violence, or other forms of harm towards any individual or group of individuals because of their good faith participation in a report, investigation, or resolution of an allegation of prohibited conduct. Retaliation includes pressuring a party to withdraw their report, as well as intimidating a party or witness to stop participating in the investigation process. Retaliation also includes the taking of an adverse employment action against an individual due to participation in a report, investigation, or resolution of an allegation of prohibited conduct.

Retaliation is more than a mere statement of opinion, a difference of opinion, or a dislike of another person's good faith decision. It must have a significant potential to interfere with a person's ability to file a report or participate in an investigation, or to interfere with or limit the University's ability to investigate or resolve allegations of prohibited conduct. Retaliation can be committed by an individual or group of individuals, including, but not limited to a reporting party or responding party.

Any allegations of retaliation will be assessed and promptly investigated.

#### J. Prohibited Relationships by Persons in Authority

Romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over another party are prohibited.

In general, this includes all sexual or other intimate relationships between students and their employers, supervisors, professors, coaches, advisors, or other non-student University personnel. Similarly, University employees who supervise or otherwise hold positions of authority over others are prohibited from having a sexual or other intimate relationship with an individual under their direct supervision.

Persons with direct supervisory, evaluative or coaching responsibilities who contemplate beginning or are involved in such relationships are required to promptly (1) discontinue any supervising role or relationship over the person; and (2) report the circumstances to their direct supervisor. This includes Resident Advisors, Community Advisors and students over whom they have direct responsibility.

This conduct is prohibited because even when both parties consent, relationships between persons occupying asymmetrical positions of power violate the standards of professional conduct. Romantic or sexual relationships between individuals in unequal positions may be less consensual than perceived by the individual whose position confers power.

Conducting a relationship in violation of this section may also constitute Sexual Harassment, above.

## **V. Related Definitions**

### **A. Consent**

Consent consists of an affirmative, conscious decision by each participant to engage in mutually agreed-upon sexual activity. Participants must act freely and voluntarily and have knowledge of the nature of the act involved. The following are essential elements of consent:

1. Consent must be informed and reciprocal. All parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.
2. Consent must be freely, actively, and voluntarily given. Consent cannot be obtained through the use of force, coercion, threats, or intimidation, or by taking advantage of the incapacitation of another individual.
3. Consent must be mutually understandable. Communication regarding consent consists of mutually understandable words and/or actions that indicate a willingness to engage in sexual activity. Consent must be clearly communicated or outwardly demonstrated; therefore, consent cannot be inferred from silence, passivity, lack of resistance, lack of active response, or choice of clothing. For example, an individual's choice of clothing is not an outward demonstration of consent to a sexual activity.
4. Consent is not indefinite. Consent may be withdrawn by either party at any time. Withdrawal of consent can be a verbally expressed statement, such as "no" or "stop" or can be based on an outward demonstration that conveys that an individual is hesitant, confused, uncertain, or is no longer a willing participant.
5. Consent is limited. Consent to one form of sexual activity does not constitute consent to all forms of sexual activity. Additionally, consent to one sexual contact does not constitute consent to future sexual contacts. A current or prior relationship does not constitute consent.
6. Consent cannot be given by a person who is under the age of sixteen (16).

## B. Force

Force is the use of, or threat of, physical violence or physical intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. The reporting party does not have to resist the sexual advance or request in order to establish the use of force; however, resistance by the reporting party will be viewed as a clear demonstration of non-consent.

## C. Coercion

Coercion is the unreasonable use of pressure to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. Coercion can include a wide range of behaviors, including, but not limited to, intimidation, manipulation, threats, or blackmail.

## D. Incapacitation

Incapacitation is a state during which an individual lacks the ability to consent because they cannot make an informed and rational decision. Individuals who are incapacitated include:

- Individuals who are asleep, unconscious, or are otherwise unaware that sexual activity is occurring
- Individuals who have an intellectual or developmental disability that impairs the ability to consent to sexual contact
- Individuals who are intoxicated from alcohol, drugs, medication, or some combination to the point that they are unable to understand the "who, what, when, where, why, or how" of the sexual interaction.

If an individual appears to give consent but is found to be incapacitated, the responding party will be found responsible for non-consensual misconduct only if a sober, reasonable person should have known that the reporting party was incapacitated.

Being intoxicated or impaired by drugs, medication, or alcohol is never an excuse for failing to obtain consent from another person.

## **VI. Reporting Prohibited Conduct**

Individuals who have experienced Prohibited Conduct have a number of options on how to proceed, and the option(s) they select initially can evolve over time. Such options include, but are not limited to: (1) seeking assistance from confidential resources; (2) reporting to law enforcement; and (3) reporting to campus authorities.

### A. Privacy versus Confidentiality

When individuals experience Prohibited Conduct, they may be concerned that what they report will be shared with others. Whether information is shared relates to whether that information is given to a private resource or a confidential resource.

Information that is reported to the Title IX Office is *Private*. Information is shared by the Title IX Office only on a “need to know” basis. Which University officials may receive information will be different for every case, but it will typically include the individuals needed to investigate or resolve the report and those individuals involved in issuing interim measures. All parties and witnesses are asked to keep details private to maintain the integrity of the investigation, but they are not restricted from sharing or discussing information related to a report or allegation with others who may support or assist them during an investigation process.

Information that is reported to confidential resources is *Confidential*. Those resources, such as medical professionals, mental health professionals, and rape crisis counselors, do not share information with the Title IX Office or the University generally, and in fact do not share information with others at all unless there is an imminent threat of harm to self or others, or there is suspected abuse of a minor. Examples of Confidential Resources include:

- Counseling Center: 906-635-2752, 623 W. Easterday Ave., Sault Ste. Marie, MI 49783
- Student Health Center: 906-635-2110, 621 W. Easterday Ave., Sault Ste. Marie, MI 49783
- Dianne Pepler Center (Advocacy/Women’s Shelter): 906-635-0566, PO Box 698, Sault Ste. Marie, MI 49783
- War Memorial Hospital: 906-635-4460, 500 Osborn Blvd., Sault Ste. Marie, MI 49783

The University prohibits seeking compensation from the recipient of any medical procedure, treatment, or care provided by a medical professional who has been convicted of a felony arising out of the medical procedure, treatment, or care.

#### B. Reporting to Law Enforcement

The University encourages reporting parties and responding parties to pursue their rights under Michigan law regarding claims of Prohibited Conduct that may also violate state law. The University will offer assistance to involved parties by directing them to law enforcement agencies regarding criminal reports and cooperate with these law enforcement agencies. A reporting party has the right to notify, or decline to notify, law enforcement. Public Safety can assist individuals with filing a criminal complaint or preserving physical evidence.

In cooperation with local law enforcement, the University may agree to defer its Title IX investigation. The University will communicate with the parties regarding Title IX rights, procedural options, and the implementation of interim measures to assure safety and well-being during any such deferral.

Criminal laws and standards of proof differ from the definitions used in this Policy. Therefore, whether law enforcement chooses to pursue criminal charges is not determinative as to whether the University’s Policy has been violated or application of University sanctions.

#### C. Reporting to Responsible Employees

Any person, at any time, may report a concern to the Title IX Coordinator, to the Public Safety Department, or to any other employee, who in turn will report to the Title IX Coordinator or designee. Individuals are encouraged to report as soon as they are able and ready to do so after the incident occurs. Reports may be made to the following:

- Title IX Coordinator: Wendy Beach, (906) 635-2213, [wbeach1@lssu.edu](mailto:wbeach1@lssu.edu)
- Deputy Title IX Coordinator: Mackenzie Edwards, (906) 635-2213, [medwards4@lssu.edu](mailto:medwards4@lssu.edu)
- Public Safety: (906) 635-2100
- Online Reporting: <https://www.lssu.edu/title-ix/>

The University encourages the reporting of sexual misconduct by reporting parties and witnesses. To encourage such reporting, reporting parties and witnesses who make a good faith report of Prohibited Conduct, or participate in an investigation under this Policy, will not be subject to disciplinary action by the University for minor policy violations related to their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The University may, however, initiate non-punitive remedies, such as attendance at an educational session regarding drug/alcohol use for minor policy violations, and may initiate disciplinary action for serious policy violations that could endanger or harm community members (e.g. drug dealing).

#### D. Employees Must Report

All employees (except those acting in their role as Confidential Resources) must report known or suspected Prohibited Conduct to the Title IX Coordinator or Deputy Title IX Coordinator as soon as possible, and all known information must be reported. This assists the Title IX Office in contacting the affected individuals as soon as possible and offering resources if needed.

Employees must also report Prohibited Conduct of which they have constructive notice. An individual has received constructive notice of Prohibited Conduct when the individual knew or should have known about the Prohibited Conduct. An employee cannot avoid reporting obligations by deliberately choosing to avoid hearing or learning about the potential Prohibited Conduct. If an individual believes they may have received constructive notice, that individual has an obligation to report this to the Title IX Coordinator for follow-up.

Due to the potential need for additional information and for accountability purposes, mandatory reports cannot be made anonymously. Failure to make a mandatory report is a violation of University policy and may result in discipline.

## VII. **Interim Measures**

Upon receipt of a report of Prohibited Conduct, the University may impose reasonably available interim measures designed to protect the parties involved. Interim measures are not disciplinary in nature. Interim measures may be amended or withdrawn as additional information is gathered.

The Title IX Coordinator, in consultation with other administrators, will maintain consistent contact with the parties so that safety (physical and emotional) concerns can be reasonably addressed.

The specific interim measures implemented and the process for implementing those measures will be case and fact specific. Factors to be considered in determining which interim measures to take include but are not limited to: (1) the specific needs expressed by the parties in relation to the allegations; (2) the age of the individuals involved; (3) the severity or pervasiveness of the allegations; (4) any continuing effects on the parties; (5) whether the parties share the same residence hall, dining hall, class, transportation, or job location; and (6) whether other judicial measures have been taken to protect one or both parties (e.g. civil protection orders).

Interim measures may include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

Interim measures will be kept private to the extent that maintaining that privacy does not impair the ability of the University to provide the interim measures. Interim measures are provided, to the extent possible, with no cost or undue burden to the parties.

If a student is placed on an interim suspension from campus as an interim measure, that student shall, within a reasonable period of time after such suspension is issued, be provided with notice of the allegations and an informal opportunity to be heard with regard to the interim suspension.

### **VIII. Title IX Review, Informal, and Formal Resolution Options**

The University is committed to providing a prompt, fair, and impartial process from the initial investigation to the final result. This process will be conducted by officials who receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking, and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

#### **A. Advisor of Choice**

At any time when making a report or participating in a process outlined in this Policy, including during any Title IX disciplinary proceeding or at related meetings, each party may bring an advisor of their choice. The advisor may be any person of their choosing, including a union representative or attorney (at their own expense), as long as that person is not a witness in the investigation. A party can change their advisor at any time. No party is required to use an advisor.

The advisor may assist the party, but may not interfere with the process, nor may the advisor speak for the party except as specifically allowed in hearings, below. Advisors who behave in a disruptive manner or interfere with the process will receive a warning and thereafter will be asked to leave.

## B. Initial Assessment

When a report of Prohibited Conduct is received, the Title IX Coordinator will conduct an initial assessment of the report, which may include any or all of the following, as appropriate:

- Assess the nature and circumstances of the report;
- Address immediate physical safety and emotional well-being concerns of the parties;
- Notify the Reporting Party of the right to contact or decline to contact law enforcement if the conduct is criminal in nature, and if requested, assist the reporting party with notifying law enforcement;
- Notify the Reporting Party of the availability of medical treatment to address physical and mental health concerns and to preserve evidence;
- Notify the Reporting Party of the importance of the preservation of evidence;
- Assess the reported conduct for any necessary actions under Clery, including inclusion in the daily crime log, annual security report, issuance of a timely warning;
- Provide the Reporting Party and Responding Party, if notified, with information about on- and off-campus resources, the range of interim accommodations and remedies, and an explanation of the procedural options;
- Inform the Reporting party and Responding Party each may have on advisor of their choosing attend meetings and interviews with them, which may include an attorney (at their own expense), colleague, or other person they identify (where appropriate, consistent with applicable collective bargaining agreement); the advisor may not be a witness or a material party in the investigation; advisor behavior is limited by this Policy
- Consider whether the facts indicate a pattern of similar conduct by Responding Party;
- Discuss the Reporting Party's expressed preference for manner of resolution and any barriers to proceeding; and
- Explain the University's policy prohibiting retaliation.

The Title IX Coordinator shall determine, as part of the initial assessment, whether voluntary resolution and/or formal investigation are available options based on the allegations.

The Title IX Coordinator will assess the facts and circumstances and consider the Reporting Party's expressed preference for the manner of resolution. When possible, the University will seek action consistent with the reporting party's request. Complaints or allegations that involve sexual violence cannot be mediated through voluntary resolution.

If the Title IX Coordinator determines that the allegations, if true, would not constitute a Title IX policy violation, the Title IX Coordinator may refer the report to another administrator, such as the Director of Human Resources, the Provost, or the Dean of Students, for further action appropriate under the circumstances.

## C. Voluntary Resolution

Voluntary resolution is designed to eliminate the discrimination or harassment through alternative actions that do not involve disciplinary action against a responding party.

Where a voluntary resolution is appropriate, the University will offer each Party the opportunity to reach an agreed-upon resolution to stop the misconduct and help both Parties move forward. If both Parties agree to participate, the Title IX Coordinator or designee will facilitate such a resolution. Resolution will result in permanent closure of the Title IX case file. Violation of the agreed-upon resolution may result in disciplinary action.

#### D. Formal Investigation

The Title IX Coordinator may initiate an investigation to determine if there has been a policy violation and, if so, whether sanctions are warranted. The Title IX Coordinator may consolidate multiple reports into one investigation and resolution if the evidence related to each incident would be relevant and probative in reaching a determination the other incident(s).

The Title IX Coordinator will designate at least one investigator of their choosing. The investigator(s) chosen to conduct the investigation must be impartial and free of any conflict of interest relevant to the case or Parties involved. In the case of matters involving sexual assault, stalking, domestic violence, or dating violence, the investigator(s) will have specific training investigating such allegations.

If allegations against an employee are made in more than one Title IX complaint that resulted in the University finding that no misconduct occurred, the University requires that the Title IX officer promptly notify the President and a member of the University's governing Board in writing and take all appropriate steps to ensure that the matter is being investigated thoroughly. An outside investigator is required to be hired for future cases involving an employee that has had more than one allegation made against them with determinations that result in the University finding no misconduct occurred. The Title IX Office will determine the outside investigator to be used. A third party investigation under this paragraph does not prohibit the University from simultaneously conducting its own investigation through its own Title IX Coordinator.

The Title IX Coordinator shall provide written notice to the responding party of the allegations constituting a potential violation of the Policy, including sufficient details and with sufficient time to prepare a response before any initial interview. Sufficient details include, to the extent known, the identities of the parties involved, the specific section(s) of the Policy allegedly violated, the precise conduct allegedly constituting the potential violation(s), and the date(s) and location(s) of the alleged incident(s).

For Title IX investigations of alleged sexual misconduct, the University prohibits the use of medical experts that have an actual or apparent conflict of interest relevant to the case or parties involved.

During the investigation, both parties will have the opportunity to suggest witnesses and provide evidence.

The investigator(s) will update both the Reporting Party and Responding Party regarding the status of the investigation at reasonable, regular intervals.

At the conclusion of an investigation, a Preliminary Investigative Report will be prepared by the investigator(s). The Preliminary Investigative Report will summarize the evidence gathered, including a list of material disputed and undisputed facts. The Preliminary Investigative Report will be sent to the Parties for their review. The Parties will have five business days to provide a written response to the Preliminary Investigative Report, which may include additional documentation and evidence. The investigator(s) may thereafter conduct whatever follow-up investigation they may deem necessary prior to preparing a Revised Preliminary Investigative Report.

The Revised Preliminary Investigative Report shall be distributed to the Parties. Each Party shall have three business days to indicate in writing to the Title IX Coordinator whether they choose to participate in a hearing or whether they waive the right to participate. Failure to indicate a hearing preference shall be considered a waiver of the right to have a hearing.

If both Parties waive the right to participate, no hearing shall be held. If any Party chooses to participate in a hearing, a hearing will be scheduled per below.

#### E. No Hearing

If no hearing is held, the investigator(s) shall prepare a Final Investigative Report, including a summary of findings and draft Notice of Determination, which contains the outcome, and the rationale for the outcome, for each of the alleged policy violations. Findings shall be based on a preponderance of the evidence. The Final Investigative Report is then assigned to a Review Panel.

When no hearing takes place, the Title IX Coordinator will assign the matter to a Review Panel. The members of the Review Panel shall be fair and impartial decision-makers. The Review Panel shall have received appropriate training to participate as informed and impartial decision-makers.

The Review Panel shall be comprised of up to three University employees. The Review Panel members shall have no prior experience with the Parties, witnesses, or incident(s) in question that would present any actual conflict of interest. The Parties will be informed of the composition of the Review Panel and may raise a challenge based upon bias or conflict to the Title IX Coordinator before the review begins.

The Review Panel will review the Final Investigative Report to determine whether:

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

In reaching a determination, the Review Panel may elect to meet with the investigator(s), but the Review Panel may not conduct its own investigation or hearing. After the Review Panel has concluded its review of the Final Investigative Report and any additional information requested

from the case file, the Title IX Coordinator, or the investigator(s), the Review Panel may do one of the following:

- Accept or reject the investigative findings in whole or in part and modify the investigative report accordingly;
- Request that further investigation be undertaken by the same or another investigator;
- Request that a new investigation be conducted.

If the Review Panel, in consultation with the Title IX Coordinator, determines that the investigator properly concluded that there is insufficient information to find, by a preponderance of the evidence, that a policy violation has occurred, the Review Panel will affirm the finding of no responsibility.

If the Review Panel, in consultation with the Title IX Coordinator, determines that the investigator properly concluded that there is sufficient information to find, by a preponderance of the evidence, that a policy violation occurred, the Review Panel will consider the imposition of a sanction designed to eliminate the misconduct, prevent its recurrence, and remedy its effects. Sanctions or interventions may also serve to promote safety or deter individuals from similar future behavior.

At the conclusion of the Review Panel's review, it will send a Notice of Outcome to each Party explaining its determination and sanctions, if any.

## F. Hearings

If a matter is referred to a Hearing, the Title IX Coordinator shall assign the matter to a Hearing Panel. The members of the Hearing Panel shall be fair and impartial. The Hearing Panel shall have received appropriate training to participate as informed and impartial decision-makers.

The Hearing Panel shall be comprised of up to three University employees. The Title IX Coordinator shall designate one member as Hearing Panel Chair. The Hearing Panel members shall have no prior experience with the Parties, witnesses, or incident(s) in question that would present any actual conflict of interest. The Parties will be informed of the composition of the Hearing Panel and may raise a challenge based upon bias or conflict to the Title IX Coordinator before the Hearing begins.

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

### 1. Pre-Hearing

The Title IX Coordinator shall provide the Parties with a deadline at least five days before the date of the Hearing. Each Party shall provide to the Title IX Coordinator in writing by that deadline:

- A list of witnesses, which may include the other Party or Parties, who the Party or their advisor wishes to cross-examine at the hearing. The Title IX investigator(s) may not be called as a witness.
- A list of questions for each witness. There is no limitation to the number of questions that may be submitted on a questions list. In general, the Hearing Panel will not permit questions that would be irrelevant, more prejudicial than probative, or immaterial. Additionally, the Hearing Panel will not permit questions that would be in violation of state or federal law, including rape shield laws.

The Title IX Coordinator will submit the lists for each party to the Hearing Panel Chair. The Hearing Panel Chair will review each list of witnesses and each list of questions prior to the Hearing, and may request additional witnesses to be present at the Hearing. Prior to, or at the start of, the Hearing, the Hearing Panel Chair will inform each Party of any of their respective witnesses or questions that will not be permitted.

The Hearing Panel Chair may choose to schedule conversations with each party and their advisor prior to the Hearing to discuss witnesses, questions, and/or other procedural matters as deemed appropriate by the Hearing Panel Chair.

## 2. Hearing

The Hearing is for the purpose of cross-examination. Cross-examination is defined as the questioning of a Party or witness by a Party through their advisor in order to ascertain the credibility of the witness's statements in the Revised Preliminary Investigative Report. The Hearing Panel may also ask questions of the Parties and witnesses. A Party and their advisor is prohibited from providing opening or closing statements at the Hearing.

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

If reasonable efforts to accommodate witness schedules are not successful, the unavailability of a witness is not a ground for postponement of the Hearing. Parties shall not discourage a witness from appearing for the Hearing. The Hearing Panel may, but is not required to, draw an adverse inference if a witness is unavailable for cross-examination.

If the reporting party does not submit to cross-examination, the Hearing Panel must consider this as appropriate under the particular facts of the case in making credibility determination, findings, and sanctioning decisions.

Each Party through their advisor may ask the witness only questions that the Party provided on its questions list and which the Hearing Panel or its Chair approved. A Party may also make reference at the Hearing to any evidence that is included in the Revised Preliminary Investigative Report. After all initial questioning of a witness is complete, either Party may have only a 10-

minute recess per witness to submit additional questions to the Hearing Panel for evaluation. The Hearing Panel Chair will evaluate the proposed additional questions based upon the same criteria used to evaluate the questions list and a party will then be permitted to ask a witness only additional questions the Hearing Panel approves.

A Party, through their advisor, may cross-examine another Party. If the questioning party does not have an advisor, the Hearing Panel Chair may consult with the questioning party to choose another individual to read the questions to the party-witness.

A Party may request to participate as a witness by using technology that enables live testimony while allowing the party-witness to be present in a different room. Witnesses may also participate in hearings via technology at the discretion of the Hearing Panel Chair.

The Hearing Panel Chair will exclude witnesses from those parts of the Hearing in which the witness does not testify. However, Parties and their advisors may be present in the Hearing room throughout the Hearing.

After the Hearing, the Hearing Panel will issue a Notice of Outcome.

### 3. Notice of Outcome

The Hearing Panel shall issue findings of fact based on the evidence collected in the investigation and further adduced at the Hearing. The Hearing Panel shall analyze those findings to determine whether, based on a preponderance of the evidence, Prohibited Conduct occurred. If a policy violation was found to have occurred, the Notice of Outcome shall include notice of sanctions. See below.

#### G. Sanctions

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

Sanctions may include disciplinary action up to and including suspensions from the University, permanent dismissal, or termination. A full list of the range of sanctions is contained later in this Policy.

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

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

For a student employee who is acting in the scope of their employment at the time of the incident, the sanction may include any permissible sanction from the Policy or the personnel policies for employees.

#### 1. Possible Student Sanctions

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

addition, any other sanctions for the new violation(s) will be imposed. During a period of deferred suspension, the terms imposed on an organization will also be binding on the members of the organization.

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

## 2. Possible Staff/Faculty Sanctions

Note: All Staff/Faculty Sanctions will be imposed in accordance with any applicable collective bargaining agreement, University policy and procedures, individual contracts, and/or appointment letters.

Potential Staff/Faculty Sanctions may include training, referral to counseling, no contact order, no trespass order, restrictions on participation or use, loss of privileges, written warning, reprimand, withholding of a promotion, reassignment, temporary suspension without pay, and/or separation from the University.

### 3. Possible Sanctions for Others

Respondents other than those in the categories listed above may be sanctioned by receiving training, referral to counseling, no contact order, no trespass order, restrictions on participation or use, loss of privileges, written warning, and/or termination of contract.

## H. Appeals

Within five calendar days of receipt of the Notice of Outcome, either Party may submit written notice of appeal to the Title IX Coordinator. Grounds for appeal are limited to:

- Substantial conflict of interest with the investigator(s), Review Panel member(s), or Hearing Panel member(s);
- New evidence not previously available to the party, which shall be set forth in or attached to the appeal;
- Mitigation of sanctions;
- Procedural error(s) that materially affected the outcome of the case; or
- The decision of the Hearing Panel or Review Panel was clearly erroneous based on the evidentiary record.

Appeal requests must specifically note the grounds for which the appeal is being made. The Title IX Coordinator will acknowledge receipt of the appeal in writing. The other Party or Parties will be given five calendar days to submit to the Title IX Coordinator a written response to the appeal. The response(s) will be shared with the party who appealed, but that Party shall not be permitted an opportunity to reply.

The Title IX Coordinator shall appoint an appropriately trained and impartial administrator or third party to review the appeal. The Appeals Officer shall review the appeal and submit a written decision to the Title IX Coordinator within ten business days of receiving the appeal and response from the Title IX Coordinator. The Title IX Coordinator may provide an extension for good cause. The Appeals Officer may:

- Affirm the determination;
- Remand for a new investigation or for additional investigation;
- Remand for a new or continued Hearing;

- Alter the sanctions;
- Alter the findings.

The Appeals Officer shall provide the decision and rationale to the Title IX Coordinator, who shall distribute it to the Parties. The appeals decision is final and binding. The Title IX Coordinator shall take appropriate action based on the outcome of the appeal.

#### I. Timelines

When a report of Prohibited Conduct is received, a Reporting Party may not be ready to move forward immediately with a University process to resolve that report. Once a Reporting Party indicates that they are ready to do so, the University attempts to complete informal resolutions within thirty calendar days and formal investigations within sixty calendar days. However, due to the availability of Parties, witnesses, investigators, Hearing Panel members, Review Panel members, and necessary records, as well as for other good reasons, delays do occur. The University will communicate with the Parties regarding expected timelines and any extensions that are granted.

#### **IX. Records**

From the first report to the final decision, accurate records shall be kept of the information collected, as well as the steps taken to eliminate the harassment, prevent its recurrence, and remedy its effects. The Title IX Coordinator shall be responsible for ensuring the preservation of records according to the University's records retention schedule.

#### **X. Training and Education**

The University is committed to the prevention of Prohibited Conduct through education and awareness programs. Prevention, education, and awareness programs include:

- An overview of the University's policies and procedures;
- Relevant definitions, including prohibited conduct;
- Discussion of the impact of alcohol, medication, and illegal drug use;
- Effective consent;
- Safe and positive options for bystander intervention; and
- Information about risk reduction.

All first-year students and incoming transfer students will be provided an in-person sexual misconduct and prevention presentation or course, which will include contact information for the Title IX Office of the University. For all students not considered freshman or incoming transfer students, an online or electronic sexual misconduct prevention presentation or course will be provided.

Faculty and staff will be provided in-person and/or online prevention education and awareness training, and reporting requirements training.

All of the above prevention, education, and awareness programs include a review of resources and reporting options available for students, faculty, and staff.

## **XI. Resources**

The Title IX Office maintains a list of campus and community resources on its website. Students may also consult the following resources:

- Campus Resources (Not Confidential):
  - Title IX Coordinator/Deputy Coordinator: 650 W. Easterday Ave., Administration Building, Room 216, (906) 635-2213
  - EEOC Officer: 650 W. Easterday Ave., Administration Building, Room 216, (906) 635-2213
  - Campus Public Safety: 650 W. Easterday Ave., Administration Building, (906) 635-2100
  - Campus Student Life: 650 W. Easterday Ave., Cisler Center, Room 125, (906) 635-2236
  - Campus Housing: 650 W. Easterday Ave., Cisler Center, Room 125, (906) 635-2411
- Campus Resources (Confidential)
  - Counseling Center: 623 W. Easterday Ave., (906) 635-2752
  - Student Health Center: 621 W. Easterday Ave., (906) 635-2110
- Community Resources (Not Confidential):
  - Emergency: 911 (if on campus, 9911)
  - Sault Ste. Marie Police: 225 East Portage Ave., (906) 632-5745
- Community Resources (Confidential):
  - Dianne Pepler Center (Advocacy/Women's Shelter): (906) 635-9566
  - War Memorial Hospital: 500 Osborn Blvd., (906) 635-4460
  - Sault Tribe Advocacy Resource Center: 2769 Ashmun Street, (800) 726-0093
  - National Domestic Violence Hotline: (800) 799-7233
  - Rape, Abuse, and Incest National Network: (800) 656-4673
  - Michigan Sexual Assault Hotline: (855) 864-2374
  - VictimConnect: (855) 484-2846
  - The Trevor Project (Crisis Line for LGBTQ Youth): (866) 488-7386
  - National Teen Dating Abuse Helpline: (866) 331-9474
  - National Indigenous Woman's Resource Center: (406) 477-3896

## **XII. Legal Notes**

References:

Title IX of the Education Amendments of 1972 – 20 U.S.C. 1681 et seq.; 34 C.F.R. Part 106  
Clery Act – 20 U.S.C. 1092(f), 34 C.F.R. 668.46

Policy Updates:

July 2019 – Revision in accordance with third party review suggestions based on best practices; integration of hearing process

August 31, 2018 – Edits to cover new Michigan Title IX Legislation  
August 1, 2017 – Revised policy published, minor edits for clarification and consistency  
July 8, 2016 – Revised policy published, minor edits for clarification and consistency  
January 18, 2016 – Interim Policy published, minor edits for clarification and consistency  
July 1, 2015 – Interim Policy published