

Lake Superior State University  
Sex- and Gender-Based Discrimination and Sexual Misconduct Policy  
Policy Number: 1.5.2  
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## **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**

Title IX prohibits the University from discrimination on the basis of sex in the education programs or activities that it operates. This prohibition extends to admission and employment. This Policy provides for the prompt and equitable resolution of complaints alleging any action prohibited by Title IX, and explains the process that the University will use for doing so. A copy of this policy is available on the University's website at: <https://www.lssu.edu/wp-content/uploads/2018/09/Policy-1.5.2-Sex-and-Gender-Based-Discrimination-and-Sexual-Misconduct-Policy.pdf>

The Title IX Coordinator has been designated and authorized to coordinate the University's efforts to address concerns relating to discrimination and harassment on the basis of sex. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person who experienced the conduct that could constitute sex discrimination or sexual harassment), at any time including non-business hours by contacting the Title IX Coordinator as follows:

Wendy Beach  
Director of Human Resources, Title IX, Safety, and Risk  
650 W. Easterday Ave.  
Administration Building, Room 212  
Sault Ste. Marie, MI 49783  
Telephone: (906) 635-2213  
Email: [wbeach1@lssu.edu](mailto:wbeach1@lssu.edu)

Emergencies should be reported to Public Safety at (906) 635-2100 or by calling 911.

In addition to addressing complaints against a particular party, the Title IX Coordinator also facilitates the handling of reports raised that the University's policies or practices may

discriminate on the basis of sex. The Title IX Coordinator conducts an assessment of such concerns and, using procedures the Title IX Coordinator determines to be appropriate given the circumstances, works with the University to ensure that its policies and practices are compliant.

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.

For the purposes of this Policy under Title IX, the conduct must have occurred against a person in the United States, the conduct must have occurred within the University's education program or activity, and the reporting party must be participating in or attempting to participate in the University's education program or activity when the complaint is filed.

## **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.

Preponderance of the evidence is a determination based on facts that are more likely true than not. In the preponderance of the evidence standard, where the evidence in a case is “equal” or “level” or “in equipoise,” the preponderance of the evidence standard results in a finding that the responding party is not responsible.

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

For the purposes of this Policy under Title IX, discrimination that occurs when conduct or a policy has the purpose or effect of restricting or denying access to opportunities, programs, or resources in relation to sex in a manner that interferes with an individual’s ability to participate in a University education program or activity. Such discrimination does not include behavior explicitly permitted by federal regulations, including single-gender housing, athletic participation, chorus participation, and hiring when sex/gender is a bona fide occupational qualification reasonably necessary to the normal operation of the University.

***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 - Non-Title IX***

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.

Sexual Harassment Non-Title IX is any of the following:

### 1. 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.

### 2. 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.

### 3. 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

#### 4. 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.

#### 5. 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.

#### ***D. Sexual Harassment – Title IX***

There are six types of prohibited conduct that qualify as “sexual harassment” under Title IX, each of which is defined more specifically below: (1) quid pro quo, (2) unwelcome conduct, (3) sexual assault, (4) dating violence, (5) domestic violence, and (6) stalking. The definitions used here are required by federal regulations.

For reported behavior to qualify as prohibited conduct under this section, in addition to meeting the elements of the specific type of sexual harassment below, it must meet all of the following **threshold requirements**, as determined by the Title IX Coordinator and as mandated by federal regulations:

- The conduct must have occurred against a person in the United States.
- The conduct must have occurred within the University's education program or activity.

For purposes of this provision, this means that the conduct must have occurred either (a) in a location, event, or circumstances over which the University exercised substantial control over both the responding party and the context in which the sexual harassment occurs or (b) in relation to a building owned or controlled by a student organization that is officially recognized by the University.

- The reporting party must be participating in or attempting to participate in the education program or activity of the University at the time the formal complaint is filed.

Behavior that ultimately is shown not to meet these threshold requirements is subject to a Title IX Dismissal, **but may still be resolved through this policy or other University policies.**

Sexual Harassment – Title IX is any of the following:

1. Quid Pro Quo – Conduct on the basis of sex where a University employee conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
2. Unwelcome Conduct – Unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
3. Sexual Assault – a forcible or no-forcible sex offense as classified under the Uniform Crime Reporting system of the FBI, to include:

- a. Penetrative Type A – The carnal knowledge of a person, without the consent of the reporting party, including instances where the reporting party is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. Carnal knowledge is defined as the slightest penetration of a vagina by a penis.
  - b. Penetrative Type B – Oral or anal sexual intercourse with another person, without the consent of the reporting party, including instances where the reporting party is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
  - c. Penetrative Type C – To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without consent of the reporting party, including instances where the reporting party is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An object or instrument is anything used by the responding party other than the responding party’s genitalia, e.g., a finger, bottle, handgun, stick.
  - d. Fondling – The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the reporting party, including instances where the reporting party is incapable of giving consent because of their age, or because of their temporary or permanent mental or physical incapacity.
  - e. Penetrative Type D – Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. This varies by state. In Michigan, MCL Section 551.3 and 551.4 prohibit marriage between individuals closer in kin than second cousins.
  - f. Penetrative Type E – Sexual intercourse with a person who is under the statutory age of consent. This varies by state. In Michigan, no person may have sex with a child under the age of thirteen, nor may a person over five years older have sex with a child under the age of sixteen. See MCL Section 750.520e.
4. “Dating violence” means violence committed by a person on the basis of sex:
    - a. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
    - b. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
      - i. The length of the relationship;
      - ii. The type of relationship;
      - iii. The frequency of interaction between the persons involved in the relationship.
  5. “Domestic violence,” which is defined to include felony or misdemeanor crimes of violence committed on the basis of sex:
    - a. By a current or former spouse or intimate partner of the victim,
    - b. By a person with whom the victim shares a child in common,
    - c. By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,

- d. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or
  - e. By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
6. "Stalking" means engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to:
- a. Fear for their safety or the safety of others; or
  - b. Suffer substantial emotional distress.

### ***E. Retaliation***

Retaliation means to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy or Title IX regulations.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute retaliation. A determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith. Any allegations of retaliation will be assessed and promptly investigated.

### ***F. Prohibited Relationships by Persons in Authority***

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

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 not of legal age to consent.

### ***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.

### ***E. Actual knowledge***

Actual Knowledge is notice of sexual harassment or allegations of sexual harassment to University's Title IX Coordinator, or any University official who has authority to institute corrective measures on behalf of the University.

Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the University with actual knowledge is the responding party. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual

harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the University.

#### ***F. Notice***

Notice is defined as a report of sex discrimination or sexual harassment to the Title IX Coordinator as described conduct that could constitute sex discrimination or sexual harassment.

#### ***G. Formal Complaint***

Formal complaint is defined as a document filed by a reporting party or signed by the Title IX Coordinator alleging sexual harassment against a responding party and requesting that the University investigate the allegation of sexual harassment. At the time of filing a formal complaint, a reporting party must be participating in or attempting to participate in the University's education program or activity of the University with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator or any additional method designated by the University. Additionally, a "document filed by a reporting party" can be in the form of an electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the reporting party's physical or digital signature, or otherwise indicates that the reporting party is the person filing the formal complaint. In situations, where the Title IX Coordinator initiates or signs a formal complaint, the Title IX Coordinator is not a reporting party and must comply with the guidelines outlined in this section.

#### ***H. Reporting Party***

A reporting party is an individual who reported that they experienced or witnessed sexual misconduct, regardless of whether that individual participates in the disclosure or review of that report by the University any point. A reporting party must be participating in or attempting to participate in a program or activity of the University. The University, through the Title IX Coordinator, may sign a formal complaint on behalf of the reporting party. This person is referred to as a "Claimant" in the Dept. of Ed. Regulations implementing Title IX.

#### ***I. Responding Party***

A responding party is a University faculty, staff, or student; or participant in a University program who is reported to have violated this policy. A responding party must be participating in or attempting to participate in a program or activity of the University. This person is referred to as a "Respondent" in the Dept. of Ed. Regulations implementing Title IX.

## 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 supportive 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.

Student education records are protected in compliance with the Family Educational Rights and Privacy Act (FERPA). Medical records are protected by similar state and

federal laws. Access to employee personnel records is restricted in accordance with University policies and federal and state law.

### ***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 supportive 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: Kate Bergel, (906) 635-2213, [kbergel1@lssu.edu](mailto:kbergel1@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. Supportive Measures**

Upon receipt of a report of Prohibited Conduct, the University may impose reasonably available supportive measures designed to protect the parties involved. Supportive measures are not disciplinary in nature. Supportive 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 supportive measures implemented and the process for implementing those measures will be case and fact specific. Factors to be considered in determining which supportive 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).

Supportive 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.

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

Supportive measures” are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the reporting party or the responding party before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University’s educational environment, or deter sexual harassment. Supportive measures include protective measures as that term is used in the Clery Act and its regulations.

“Supportive measures” may include, but are not limited to:

- Providing access to counseling services and assistance in setting up an initial appointment
- Issuing and enforcing No Contact Directives, which are usually mutual unless and until a finding of responsibility for a policy violation has been made
- Providing alternative on-campus housing
- Assisting with relocation of housing or work space
- Providing an escort to ensure safe movement between classes and activities
- Making changes to behavior, movement on campus, access to buildings or spaces, and/or participation campus activities
- Modifying academic and extracurricular activities, transportation, and dining arrangements
- Extending deadlines and assisting with other course-related adjustments
- Modifying work or class schedules
- Assisting with obtaining a leave of absence
- Providing alternative course completion options
- Providing academic support services
- Assisting in obtaining visa or immigration information
- Modifying transportation, parking, dining and working situations
- Implementing access restriction or interim suspension of an individual while a matter is investigated and resolved
- Imposing other protections or behavioral restrictions as necessary and appropriate

The University offers supportive measures to both reporting parties and responding parties. Upon receipt of a report of an identifiable reporting party, the Title IX Coordinator will promptly contact the reporting party to discuss the availability of supportive measures, consider the reporting party’s wishes with respect to supportive measures, and inform the reporting party of the availability of supportive measures with or without the filing of a formal complaint, and explain to the reporting party the process for filing a formal complaint if one is desired.

Upon giving notice to a responding party of a report raising potential sexual harassment violations against the responding party, the Title IX Coordinator will notify the responding party of the

availability of counseling and may notify the responding party of the availability of other supportive measures, as the Title IX Coordinator deems appropriate.

Throughout any grievance process, the Title IX Coordinator will continually reassess and discuss appropriate supportive measures with the parties as the Coordinator deems appropriate. If the Title IX Coordinator does not offer supportive measures to the reporting party, the Title IX Coordinator must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The University will maintain as confidential any supportive measures provided to the reporting party or responding party, to the extent that maintaining such confidentiality would not impair the ability of University to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Upon receipt of a formal complaint, the Title IX Coordinator shall conduct an individualized safety and risk assessment to determine whether the responding party's presence in the University's education programs and activities poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment. If so, the Title IX Coordinator will determine whether such risk assessment justifies the removal of the responding party from campus on an emergency basis pending the outcome of the investigation. Threats must pose more than a generalized, hypothetical, or speculative risk to health and safety for emergency removal to be appropriate.

A removed responding party will receive written notice from the Title IX Coordinator of the emergency removal and will be provided with an opportunity to appeal the decision within writing to the Vice President of Finance and Operations within two business days of the removal. The Vice President of Finance and Operations decision must be rendered within two business days of receiving the appeal.

Non-student employees may be placed on administrative leave during the grievance process without receiving any appeal of such administrative leave.

### **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.

Any individual acting as a Title IX Coordinator, investigator, decision-maker, or any person designated by a University to facilitate an informal resolution process must not have a conflict of interest or bias for or against reporting parties or responding parties generally or an individual reporting party or responding party. The following will not be considered evidence of bias:

- The Title IX Coordinator's initiation of a formal complaint, or;
- An individual's decision that allegations warrant an investigation.

The University will apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased, and will exercise caution not to apply generalizations that might unreasonably conclude that bias exists. An individual's current job title, professional qualifications, past experience, identity, or sex will not alone indicate bias.

Use of trauma-informed practices will not be considered evidence of bias when such practices do not:

- Rely on sex stereotypes;
  - Apply generalizations to allegations in specific cases;
  - Cause loss of impartiality, and;
- Prejudge the facts at issue.

#### ***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). A party can change their advisor at any time.

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 supportive 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 violation under this policy, 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.

If the Title IX Coordinator determines that the formal complaint alleges sufficient information to suggest that Prohibited Conduct may have occurred, they will provide written notice to all parties of the charges that will be investigated. The charges may include violations of other University policies where such charges are related to the Prohibited Conduct under investigation. In such cases, these policy violations will be addressed pursuant to this Policy and not any other disciplinary process, such as the student conduct process.

The written notice shall include:

- Notice of this Policy;
- Allegations of Prohibited Conduct and any other violations of University policy that will be considered in the same case, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- The University's position that the responding party is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- The right of each party to have an advisor of their choice, who may be an attorney;
- The right of each party to inspect and review evidence;
- The University's prohibition on knowingly making false statements or knowingly submitting false information during the grievance process;

- The date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings currently scheduled, with sufficient time for the party to prepare to participate.
- The identity of the investigator and a short timeline to object due to any concerns about bias or conflict

If additional allegations are determined to be appropriate to add to the investigation at a later time, the Title IX Coordinator shall provide notice of such allegations in writing to all parties.

As part of the initial assessment, the Title IX Coordinator will determine what Prohibited Conduct is properly alleged, whether informal resolution would be appropriate in the case given the allegations, and whether any of the allegations constitute “Sexual Harassment – Title IX” under this Policy.

### ***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. The expected timeframe for resolution is 30 day. The timeframe can be extended for good cause with notice to all parties.

The University does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, the waiver of the right to an investigation and adjudication of formal complaints of Prohibited Conduct under the University’s Policy. Similarly, The University will never require the parties to an allegation of Prohibited Conduct to participate in an informal resolution process, as described below.

After the initiation of a formal complaint of Prohibited Conduct, if all parties voluntarily consent in writing, the University will assist the parties in an informal resolution process. An informal resolution process is available at any time prior to reaching a determination regarding responsibility in the formal resolution process, except in the cases of reports of “Sexual Harassment – Title IX” of a student by a University employee.

Before initiating an informal process, the University will: (1) provide the parties a written notice that an informal resolution process is available to them; and (2) obtain the parties’ voluntary, written consent to the informal resolution process. The written notice to the parties will disclose the allegations, the requirements of the informal resolution process (described below), and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The University’s informal process enables that, at any time prior to agreeing to a resolution, any party has a right to withdraw from the informal resolution process and resume the formal resolution process with respect to the formal complaint.

When allegations of Prohibited Conduct can be resolved through informal resolution by mutual consent of the parties and on a basis that is acceptable to the Title IX Coordinator, the resolution process shall be considered finally decided and there will be no subsequent process or appeal.

#### ***D. 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 University may consolidate formal complaints as to allegations of sexual harassment against more than one responding party, or by more than one reporting party against one or more responding parties, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. The same facts and circumstances means that the multiple reporting parties' allegations are so intertwined that their allegations directly relate to all parties.

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.

## 1. Gathering and Sharing of Evidence

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties.

The University will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent.

The University will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. A party's communication with a witness or potential witness is considered part of a party's right to meaningfully participate in furthering the party's interests in the case, and not an "interference" with the investigation. However, where a party's conduct toward a witness might constitute "tampering" (for instance, by attempting to alter or prevent a witness's testimony), such conduct also is prohibited as retaliation.

The parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. The University will not consider or provide for inspection and review evidence which the University knows was illegally or unlawfully created or obtained. The University may impose on the parties and party advisors restrictions or require a non-disclosure agreement not to disseminate any of the evidence subject to inspection and review.

When the investigator believes he or she is ready to prepare the investigative report, the Title IX Coordinator will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have 10 calendar days to submit a written response.

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

## 2. Preparing the Investigative Report

The investigator will review the parties' written responses, conduct any follow-up investigation he or she deems appropriate, and prepare an investigative report that summarizes relevant evidence. The investigative report will not include a summary of

evidence not considered to be relevant. If the complaint involves multiple reporting parties, multiple responding parties, or both, the University may issue a single investigative report.

The investigative report will include an assessment as to whether the conduct, if proven, would constitute “Sexual Harassment – Title IX” as defined within this Policy. The Title IX Coordinator will review the assessment and shall notify the parties within two business days of receiving the investigative report whether the Title IX Coordinator concurs with the assessment of the investigator. If the Title IX Coordinator determines that none of the conduct, if proven, would constitute “Sexual Harassment – Title IX,” the case shall proceed through the No Hearing process pursuant to Section VIII E, or the Hearing process pursuant to Section VIII, F, 2.

If the Title IX Coordinator determines that at least some of the conduct, if proven, would constitute “Sexual Harassment – Title IX,” the case shall proceed to a Hearing pursuant to Section VIII, F, 2.1.

The Title IX Coordinator’s decision may be appealed to Vice President of Finance and Operations in writing within one business day of receipt of the decision. The Vice President of Finance and Operations decision is final.

Each party and their advisor shall receive a copy of the investigative report for their review and written response, at least 10 calendar days prior to a hearing or other time of determination regarding responsibility. If a party disagrees with an investigator’s determination about relevance, the party may argue relevance in their written response.

*For Sexual Harassment – Non-Title IX Only:*

If it is determined the alleged conduct could constitute Sexual Harassment – Non-Title IX, 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 beings.

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 by 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***

Upon conclusion of the investigation, where it is determined that there are allegations of “Sexual Misconduct – Title IX,” the University will conduct a live hearing. For allegations of “Sexual Misconduct – Non-Title IX” the parties will have an opportunity for a live hearing as described in this Policy.

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**

At least five business days prior to the hearing, a pre-hearing conference will be held with each party, the party’s advisor, the Title IX Coordinator, and the hearing officer. At the pre-hearing conference, the party and advisor must disclose the witnesses that will be requested and the evidence that will be submitted for consideration. Evidence and witnesses may only be considered at hearing if they were submitted to the investigator, unless they were previously unknown or unavailable to the party during the investigation. The hearing officer will address any requests for new evidence and new witnesses at the pre-hearing conference. The hearing officer will also discuss guidelines for appropriate behavior and decorum during the hearing. The party and advisor are encouraged to ask questions.

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-Non-Title IX**

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.

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.

A Party may also make reference at the Hearing to any evidence that is included in the Revised Preliminary Investigative Report.

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. Hearing – Title IX

If the Sexual Harassment – Title IX Policy is being considered in the case, the hearing will occur as follows:

The Title IX Coordinator will appoint a hearing officer to conduct the hearing and be the decision-maker. The hearing officer may not be the Title IX Coordinator, the investigator who investigated the allegations, or the informal resolution officer. The hearing officer is under an obligation to objectively evaluate all

relevant evidence both inculpatory and exculpatory. The hearing officer has the right to ask questions and elicit information from parties and witnesses on the hearing officer's own initiative.

Hearings will be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

The University will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

At the live hearing, the hearing officer will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Before a reporting party, responding party, or witness answers a cross-examination or other question, the hearing officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

The hearing officer makes relevancy determinations. The hearing officer is not required to give a lengthy or complicated explanation of a relevancy determination during the hearing, and may send to the parties after the hearing any revisions to the hearing officer's explanation that was provided during the hearing.

Cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. All questioning will be relevant, respectful, and non-abusive. No party will be "yelled" at or asked questions in an abusive or intimidating manner.

If a party or witness does not submit to cross-examination at the live hearing, the hearing officer will not rely on any statement of that party or witness in reaching a determination regarding responsibility. However, a responding party's alleged verbal conduct that itself constitutes the reported Prohibited Conduct at issue is not considered the responding party's "statement" and therefore may be considered even if the responding party does not submit to cross-examination. Similarly, video evidence showing the conduct alleged within a complaint may be considered, even if the party does not submit to cross-examination. The hearing officer will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Parties will have equal opportunities to have others present during the hearing, including the opportunity to be accompanied by the advisor of their choice, who may be, but is not required to be, an attorney. The University will not limit the choice or presence of an advisor for reporting party or responding party in any

meeting or grievance proceeding. Advisors are required to abide by University restrictions regarding the extent to which they may participate in proceedings, and any restrictions will apply equally to both parties. If a party's advisor refuses to comply with restrictions set by the University, the University may require the party to use a different advisor.

If a party does not have an advisor present at the live hearing, the University will provide without fee or charge to that party, an advisor of the University's choice to conduct cross-examination on behalf of that party. That advisor may be, but is not required to be, an attorney.

Relevancy determinations will be made pursuant to Section VIII.F.3. Credibility will be considered pursuant to Section VIII.F.3. Decisions will be prepared pursuant to Section VIII.F.3. Sanctions, if any, will be determined pursuant to Section VIII.F.3. Additional remedies, if any, will be determined pursuant to Section VIII.F.3.

#### 4. Relevancy, Credibility, Notice of the Outcome, Sanctions and Remedies

Relevant evidence is evidence that tends to make a fact that is important to the case either more probable or less probable. Relevant questions are those questions that are designed to elicit relevant evidence.

The following may be considered irrelevant:

- Repetitive or duplicative questions or evidence;
- Information that is protected by a legally recognized privilege, such as attorney-client privilege;
- Questions and evidence about the reporting party's sexual predisposition or prior sexual behavior, unless:
  - Such questions and evidence about the reporting party's prior sexual behavior are offered to prove that someone other than the responding party committed the conduct alleged by the reporting party; or
  - The questions and evidence concern specific incidents of the reporting party's prior sexual behavior with respect to the responding party and are offered to prove consent;
- Any party's medical, psychological, and similar records, unless the party has given voluntary, written consent for their use in the process.

The University will not exclude relevant evidence because such relevant evidence may be unduly prejudicial, concern prior bad acts (unless excluded above), or constitute character evidence. However, the decision-maker may objectively evaluate such evidence by analyzing whether that evidence warrants a high or low level of weight or credibility.

The decision-maker will evaluate all admissible, relevant evidence for weight or credibility. The degree to which any inaccuracy, inconsistency, or implausibility

in a narrative provided by a party or witness should affect a determination regarding responsibility is a matter to be decided by the decision-maker, after having the opportunity to ask questions of parties and witnesses, and to observe how parties and witnesses answer the questions posed by the other party (in the case of a live hearing). Corroborating evidence is not required.

Credibility determinations are not based solely on observing demeanor, but also are based on other factors (e.g., specific details, inherent plausibility, internal consistency, corroborative evidence).

A party's answers to questions can and should be evaluated by a decision-maker in context, including taking into account that a party may experience stress while trying to answer questions. Parties will not be unfairly judged due to inability to recount each specific detail of an incident in sequence.

The decision-maker will issue a written determination of responsibility using a "preponderance of the evidence" standard. A preponderance of the evidence means that it is more likely true than not that a policy violation occurred. The determination of responsibility will include:

- Identification of the allegations potentially constituting sexual harassment
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the responding party (see Section VIII.F.4), and whether remedies will be provided by the University to the reporting party (see Section VIII.F.4), and;
- The University's procedures and permissible bases for the reporting party and responding party to appeal (see Section VIII.G).

The determination will lay out the evidentiary basis for conclusions reached in the case. The nature of remedies, if any, will not be included within the determination. The determination will be provided to the parties simultaneously. The determination becomes final only after the time period for appeal has expired or, if a party does file an appeal, after the appeal decision has been sent to the parties.

Where a determination of responsibility for Prohibited Conduct is made, the University will provide remedies to a reporting party designed to restore or preserve equal access to the University's education program or activity. Such remedies may include the same individualized services provided as supportive

measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the responding party. The Title IX Coordinator is responsible for effective implementation of remedies.

Where the final determination has indicated that remedies will be provided, the reporting party can then communicate separately with the Title IX Coordinator or their designee to discuss what remedies are appropriately designed to preserve or restore the reporting party's equal access to education. Remedies for a reporting party which do not affect the responding party must not be disclosed to the responding party.

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.

## ***G. 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. Any party may appeal the decision-makers' determination regarding responsibility, or the University's dismissal of a formal complaint or any allegations therein. The University will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. The decision-maker for the appeal will issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both parties.

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.

Grounds for appeal in a Title IX – Harassment case are limited to:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter, and;
- The Title IX Coordinator, investigator, or Panel members had a conflict of interest or bias for or against reporting parties or responding parties generally or the individual reporting party or responding party that affected the outcome of the matter.

All grounds for appeal will be available to all parties.

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 decision-maker for the appeal will

not be the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator. 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.

#### ***H. Timelines***

The University will attempt to complete most investigations within 60 days. The timeframe for formal investigations will begin upon filing of a complaint and will conclude upon submittal of a decision by the decision-maker. Investigations may be delayed and timeframes for investigations may be extended for good cause and with written notice provided by the Title IX Coordinator to reporting parties and responding parties including the reason for the delay or extension. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

The University will attempt to accommodate the schedules of parties and witnesses, however, grievance resolution must be completed in a reasonably prompt timeframe, and must proceed to conclusion even in the absence of a party or witness.

### **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 for seven (7) years.

Records will include records of:

- Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary

sanctions imposed on the responding party, and any remedies provided to the reporting party designed to restore or preserve equal access to the recipient's education program or activity;

- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom;
- All materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process, and;
- Records of any actions including any supportive measures, taken in response to a report or formal complaint of sexual harassment

## **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.

### ***A. Required of those on campus***

All incoming students and new employees will receive training on the prevention of dating violence, domestic violence, sexual assault, and stalking. Training will include:

- Information on The University's prohibition on dating violence, domestic violence, sexual assault, and stalking, and the definitions of each;
- The definition of consent;
- A description of safe and positive options for bystander intervention;
- Information on risk reduction, and;
- Information on The University's criminal and university-based investigation process.

In addition, The University will conduct ongoing prevention and awareness campaigns for students and employees, including programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution and including information described in this section.

### ***B. Required of those instituting the policy***

The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an alternate resolution process, will receive training on the definition of sexual harassment, the scope of The University's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and alternate resolution processes, and how to

serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. This includes how to apply the definitions with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with this policy. Investigators will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Decision-makers will receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the reporting party's sexual predisposition or prior sexual behavior are not relevant.

Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an alternate resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

Training under this section is required on an as-needed basis. Training materials for training under this section will be made publicly available through The University's website. Published training materials will be up-to-date and reflect the latest training provided.

The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an alternate resolution process, will receive annual training on 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.

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