



UNIVERSITY OF  
MICHIGAN

# Interim Policy on Sexual and Gender-Based Misconduct and Related Employee and Student Procedures





# Purpose of Today's Presentation

- Background
- Summary of Final Title IX Regulations
- SPG
- Umbrella Policy
- Employee Procedures
- Student Procedures
- Next Steps
- Comments, Questions, and Feedback

Background



# Background

- 2018: U-M engaged the law firm of Hogan Marren Babbo & Rose (HMBR) to conduct a review of sexual misconduct policies and procedures, whose recommendations ultimately included adoption of an umbrella policy
- Task team of subject matter experts undertook this work



# Background

- 2018: Dept. of Ed put out proposed Title IX regulations for notice and comment
- January 2020: University decided to to delay finalization of the Umbrella Policy and Related Procedures until this summer due to DOE's pending release of the final Title IX Regulations.
- Unlike prior guidance documents, the final Title IX Regulations have the force of law because they went through public notice-and-comment.



# Background

- May 2020: Dept. finalizes Title IX regulations - 26 pages with a preamble, which contains instructional excerpts behind DOE's intent, of over 2,000 pages.
- May – July 2020: Task Team works to make the significant revisions required by the Regulations
- August 14, 2020: Regulations, and Interim Policy are effective



# Background

- Because DOE mandated an effective date of August 14, 2020, the University implemented the Umbrella Policy and Related Procedures on an interim basis.
- The Task Team will educate and solicit feedback from the University Community on the Umbrella Policy and Related Procedures until March 15, 2021.
- Following the review period, the Task Team will consider the feedback and recommend any changes for a final effective date of July 1, 2021.

# Final Title IX Regulations





# Final Title IX Regulations

- The final Title IX Regulations apply to students and employees, including employee on employee sexual misconduct.
- It does not matter if the employee is bargained for, at will, or a faculty member.
- This requires institutions to examine whether complained of conduct triggers obligations under Title VII, Title IX, neither, or both.



# Final Title IX Regulations

- The regulations explicitly define the scope of universities' responsibilities to respond to complaints of sexual misconduct.
- It defines conduct (Title IX Misconduct) that schools must respond to, and provides very prescriptive procedures for how they should respond to it.
- For all other forms of sexual misconduct, the Department of Education says that schools have discretion to determine how, if at all, they want to respond to it.
  - While the Department of Education does not require us to look into matters that do not constitute Title IX Misconduct (e.g., a sexual misconduct incident alleged to have occurred overseas), we may still choose to do so, and in some cases, we have an affirmative obligation under Title VII to do so.

# Interim Umbrella Policy



# Umbrella Policy

## Scope and Applicability of Prohibited Conduct

- Continues to prohibit essentially the same behaviors as draft policy (called Sexual and Gender-Based Misconduct); and
- Adds Title IX Misconduct:
  - All Title IX Misconduct also meets another definition of Prohibited Conduct
  - Not all behavior that violates the Policy constitutes Title IX Misconduct



# Umbrella Policy

Sexual and Gender-Based Misconduct, unlike Title IX Misconduct:

- Applies regardless of where the behavior occurs if it is connected to a University program or activity; or
- Creates a hostile environment/has a continuing effect on campus/in a University program or activity.

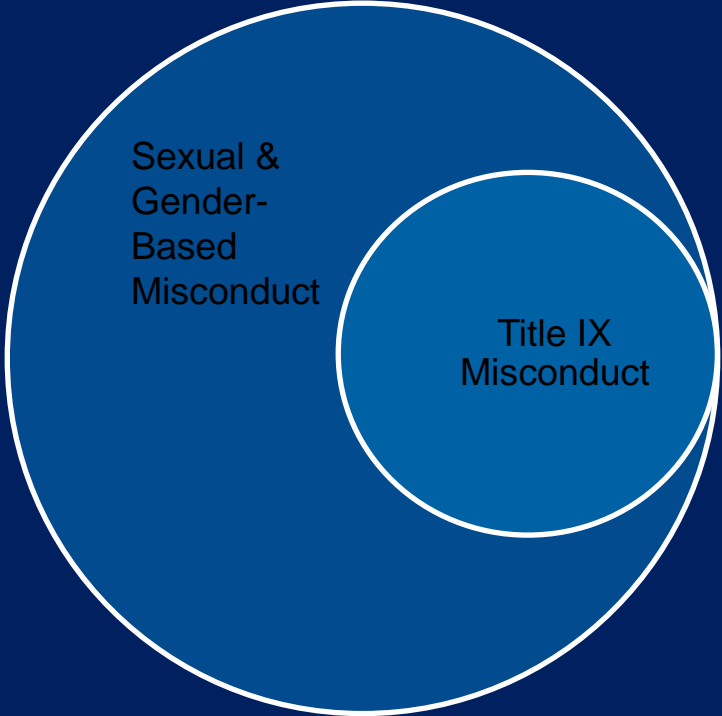
## Prohibited Conduct

### Sexual and Gender-Based Misconduct

- Sexual Assault
- Sexual Exploitation
- Sexual Harassment
- Gender-Based Harassment
- Sex and/or Gender-Based Stalking
- Intimate Partner Violence
- Sex and Gender-Based Discrimination
- Retaliation
- Violation of Supportive Measures

### Title IX Misconduct

- Sexual Assault
- Sexual Harassment
  - *Quid pro quo* sexual harassment by employee
  - Severe, pervasive and objectively offensive sexual harassment
- Sex-Based Intimate Partner Violence
- Sex-Based Stalking



Sexual &  
Gender-  
Based  
Misconduct

Title IX  
Misconduct

# Umbrella Policy



## To file a report/complaint with the University:

Elizabeth Seney  
Title IX Coordinator – Ann Arbor  
Office for Institutional Equity  
2072 Administrative Services Building  
1009 Greene Street  
Ann Arbor, Michigan 48109  
(734) 763-0235 (telephone)  
(734) 647-1388 (TTY)

[institutional.equity@umich.edu](mailto:institutional.equity@umich.edu)

## To file a criminal report/complaint with law enforcement:

University of Michigan Police Department  
(UMPD) Special Victims Unit (dedicated unit  
for responding to and investigating sexual  
assaults, intimate partner violence, stalking,  
and child abuse)  
9-1-1 or  
(734) 763-1131

[dps-s-safety-security@umich.edu](mailto:dps-s-safety-security@umich.edu)





# Reports Involving OIE or Reporting Chain

- As recommended in Wilmer Hale's report regarding Martin Philbert, the task team revised the umbrella policy to include a provision that reports of Prohibited Conduct against individuals in OIE's supervisory chain or against individual OIE staff members should be made to the Executive Vice President and Chief Financial Officer, or their designee.
- Making a report means informing the Executive Vice President and Chief Financial Officer about the suspected Prohibited Conduct.



# Reports Involving OIE or Reporting Chain

- Ann Arbor/Michigan Medicine: reports regarding the Provost; the Provost's Senior Staff; an Associate or Assistant Vice Provost; or an OIE employee.
- Dearborn: reports regarding the Chancellor; the Chancellor's Chief of Staff; or an employee of OIE.
- Flint: reports regarding the Vice Chancellor of Business and Finance (VCBF) or an employee of OIE.



# Umbrella Policy

## Individuals With Reporting Obligations (IROs)

- Concept of Responsible Employee is gone under the Title IX Regulations, but we have replaced it with IROs.
- All other employees are encouraged to report, but IROs are required to do so.
- IROs:
  - Must share details of possible prohibited conduct with OIE within 48 hours of learning of it; and
  - May be disciplined for failing to report.



# Umbrella Policy

Two Categories of IROs:

- Officials With Authority to Institute Corrective Action must report to OIE, always. There are no exceptions.
- Other IROs must report except when learned about outside scope of employment or in academic contexts and other limited circumstances (slide listing exceptions upcoming)



# Umbrella Policy

IROs Who Are Officials With Authority include:

- Board of Regents members, Executive Officers/Chancellor;
- Deans;
- Department Chairs;
- Dean of Students and Student Conduct Advisors;
- Athletic Director and Varsity Head Coaches; and
- OIE Director and Title IX Coordinator



# Umbrella Policy

Other IROs (who are not Officials with Authority):

- Must report information about Prohibited Conduct to OIE within 48 hours unless learned about:
  - Outside the scope of their employment; or
  - When communicated/disclosed during:
    - A classroom discussion;
    - In an assignment for a class;
    - In discussions outside of class time (e.g., during office hours related to the assignment);
    - As part of a research project directly associated with the class;
    - At sexual misconduct public awareness events; or
    - Unless otherwise provided in the IRB-approved consent, during a non-minor participant's involvement as a subject in an IRB-approved human subjects research protocol.



# Umbrella Policy

Other IROs include:

- Vice, associate and assistant Executive Officer/Chancellor, Dean and Department Chair roles ;
- Academic and staff supervisors (i.e., employees who have authority to hire, transfer, suspend, layoff, recall, promote, discharge, reward or discipline other employees ); and
- Student Life, Athletics, HR, DPSS and HR staff (in general, clerical, custodial, maintenance, and similar staff are not IROs).



# Umbrella Policy

Other IROs include:

- Faculty and staff members who provide direct oversight of University-related travel abroad experiences for students, including University-sponsored study abroad, research, fieldwork, or internship programs;
- Faculty and staff members who accompany students on University-related travel abroad; and
- Faculty and staff serving as identified advisers to student organizations to Sponsored Student Organizations and Registered Student Organizations.
  - NOTE: Unless designated as an IRO in another role at the University, staff and faculty members who serve as such advisors are only IROs with respect to concerns they become aware of connected to the student organization they advise.





# Retaliation

- Prohibited Conduct under the Policy
- Fear or retaliation can be a barrier to reporting

# Interim Employee Procedures



# Employee Procedures

The procedures used depends on the Respondent:

- Employee Respondent = Employee Procedures
- Student Respondent = Student Procedures
- Third party = Employee Procedures



# Key Provisions of Employee Procedures

- University always follows up on reports about employees, even where Complainant does not wish it.
- The Employee Procedures include two processes:
  - Sexual and Gender-Based Misconduct
  - Title IX Misconduct
- Mediation is also available, but never where a Complainant is a Student.



## Key Provisions of Employee Procedures (cont.)

Sexual and Gender-Based Misconduct process includes:

- Single investigator model -- OIE investigator gathers facts, analyzes evidence and makes a determination regarding responsibility;
- Determination made using a preponderance of the evidence standard;
- No appeals;
- Timeframe for completion is 120 days.



# Key Provisions of Employee Procedures (cont.)

Title IX Misconduct Process includes:

- Investigation by OIE and preliminary report summarizing evidence;
- A live hearing;
- A hearing officer – external to the University – facilitates the hearing, asks questions, and makes a determination regarding responsibility;
- Both parties afforded an opportunity to have an advisor cross-examine the other party and witnesses;
- If a party does not have an advisor, the University will provide one (the advisor will be an employee volunteer);

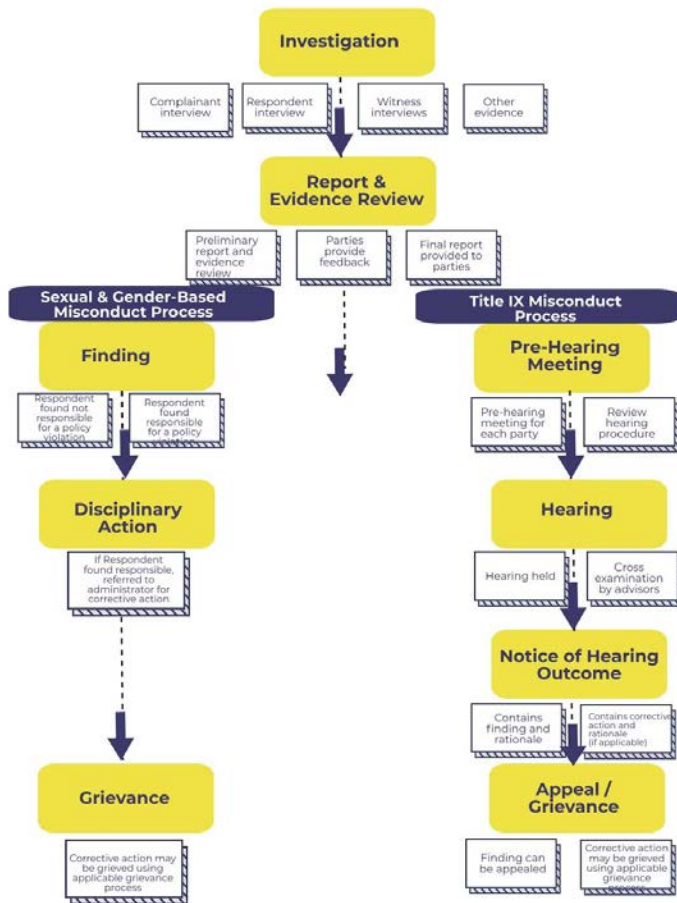


# Key Provisions of Employee Procedures (cont.)

Title IX Misconduct Process includes (cont.):

- Hearing outcome decided using a preponderance of the evidence standard;
- Either party has the opportunity to appeal finding;
- An external appellate officer makes all appellate determinations; and
- Timeframe for completion is 180 days.

# Investigation





# Interim Student Procedures



# Student Procedures

- The Interim Student Procedures use one process for all forms of Prohibited Conduct (Title IX Misconduct as well as Sexual and Gender-Based Misconduct).
- The Interim Student Procedures are consistent with the highly prescriptive process required under the Title IX regulations for Title IX Misconduct.



# Key Provisions of Student Procedures

Student Procedures generally used with a Student Respondent.

University rarely moves forward without a willing Complainant.

The Student Procedures continue to offer Students two options for resolving matters:

- Investigative Resolution
- Adaptable Resolution



# Key Provisions of Student Procedures (cont.)

Investigative Resolution includes:

- Investigation by OIE and preliminary report summarizing evidence;
- A live hearing;
- A hearing officer – external to the University – manages the hearing, asks the majority of questions, and makes a determination of responsibility;
- Both parties afforded an opportunity to have an advisor cross-examine the other party and witnesses;

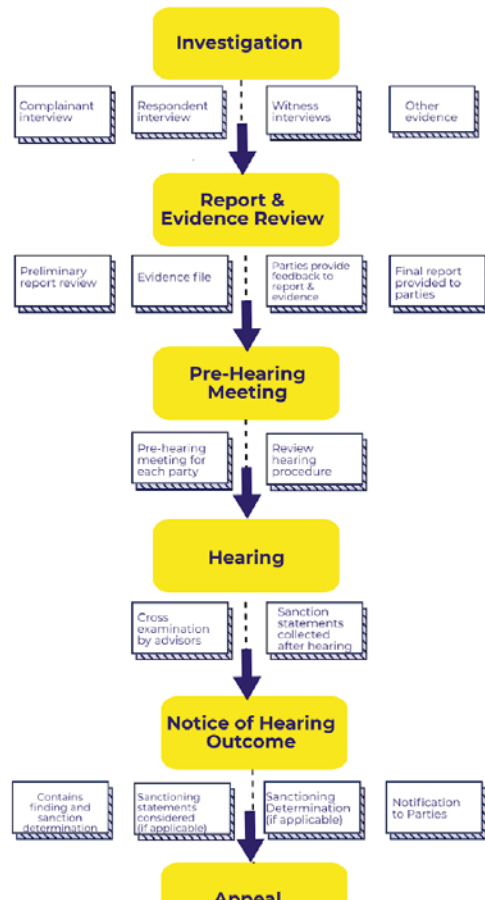


# Key Provisions of Student Procedures (cont.)

Investigative Resolution includes (cont.):

- If a party does not have an advisor, the University will provide one to conduct cross-examination (the advisor will be an attorney);
- Hearing outcome decided using a preponderance of the evidence standard;
- Either party has the opportunity to appeal the finding and sanctions;
- An external appellate officer makes all appellate determinations;  
and
- Timeframe for completion is 180 days.

# Investigative Resolution





# Key Provisions of Student Procedures (cont.)

## Adaptable Resolution:

- Includes a voluntary, non-disciplinary, remedies-based structured process between or among the affected parties;
- Is generally designed to allow a Respondent to acknowledge harm and accept responsibility for repairing harm (to the extent possible) experienced by the Complainant; and
- Must be agreed on by both Students and approved by the Title IX Coordinator.

Next Steps





# Next Steps

- Continued educational programming;
- Task Team outreach to the community for feedback; and
- Policy finalized and effective July 1, 2021.



# Next Steps (cont.)

Those interested in providing feedback now may do so at:

[https://umich.qualtrics.com/jfe/form/SV\\_5jWcxCmXzzxXdnn](https://umich.qualtrics.com/jfe/form/SV_5jWcxCmXzzxXdnn)

Comments, Questions, Feedback?