

## Final Suggestions of SACUA's WilmerHale Committee

UM's processes for reporting, investigating, and sanctioning sexual misconduct are inadequate. Protections for complainants (including victims), witnesses, and respondents (including accused perpetrators) fall far short and discourage accountability of mid-to-upper level administration. The appointment of M. Philbert as Dean of the School of Public Health, his reappointment to that position, and his subsequent appointment as Provost, show that *the system is in need of significant structural modifications*. Policy alone has proven insufficient.

In particular, the career of M. Philbert reveals significant failures in administrator selection, evaluation, and promotion processes enabled by a climate of fear and retaliation among faculty and staff. News reports of sexual abuse at UM beyond Philbert, together with knowledge held by members of this Committee, suggest that too much discretion is left to Deans and Directors in the solicitation and application of findings by the Office for Institutional Equity (OIE). Favoritism may be built in. Evidence too often does not get where it needs to be, or is overlooked or minimized.

Aiming to restore confidence in the system -- which can only be trusted when it proves itself worthy of trust -- we recommend the following:

### Develop Standing External Independent Oversight

1. Create an independent board of experts to oversee the University's culture, administrative integrity, and compliance to review reports of misconduct, especially those involving deans and directors, with focus on sexual and racial abuse, bullying, and discrimination.
2. Create an external mediation and arbitration panel that faculty and staff can elect to use if the ombuds or other channels fail or do not inspire confidence in the alleged victim(s) due to the power imbalance<sup>1</sup> between the person(s) bringing the complaint and the person complained against. This panel could hold fact-finding hearings as well as mediation and also handle appeals from findings of OIE and determine sanctions with the agreement of both parties.

### Revise Internal Policies/Procedures with Respect to Sexual Misconduct

1. Allow appeals for faculty/staff sexual misconduct complaints in non-Title IX cases (as exist for Title IX misconduct and student cases). Ensure that parties have equitable access to representation, and that the process protects the rights of all parties equally (e.g. on provision of documents, questioning of witnesses, etc.).
2. Conduct outreach toward restoring confidence in the system. This may involve:
  - a. Visible change in OIE structure, including change in the reporting line;
  - b. Improvement in the tracking of resolutions;
  - c. Increasing transparency, including through encouraging people (who are willing to do so) to talk about their experiences—good or bad—with OIE or ombuds.
3. The WilmerHale Report devoted considerable attention to what it termed “consensual relationships.” This Committee’s view is that sexual relationships in which a subordinate employee acquiesces under pressure from a superior employer cannot be considered *prima facie* welcome -- rather the reverse. The appropriate standard for measuring relationships under unequal conditions is “welcomeness,” meaning enthusiastic initiating and mutual enjoyment for its own sake, not “consent,” which encompasses acquiescence in undesired contact for extrinsic transactional ends due to relative powerlessness and precluded options. Consent is not an equality standard; it comes from criminal law. Sexual harassment law is equality law, which is civil law and uses “unwelcomeness.” We are aware that U-M is tackling this issue with a separate policy.

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<sup>1</sup> Recognized power imbalances can include disparity in formal structural status, in social location based on sex, race, and other grounds of disadvantage, as well as in personal closeness to or distance from powerful actors.

### Improve Practices for Hiring, Evaluation, and Reappointment of Administrators

1. Enhance scrutiny of internal candidates for administrative appointments at the Dean level and above, including:
  - a. Require candidates and search committee members to disclose all known conflicts of interest, including financial and personal; failure to disclose can be grounds for sanction;
  - b. Require OIE to provide records of *all* reports that fall under the purview of internal candidates, *even if they were not investigated*. This practice will enable the search committee to evaluate the candidates' lived commitment to ensuring a safe workplace;
  - c. Require the search committee members to verify that they have reviewed the OIE records provided in 1b;
  - d. Require the search committee members verify that they have investigated all "red flag" reports.
2. Publish clear criteria for administrative reappointment and certify that steps 1a-d have been followed for the reappointment process.
3. Create a well-articulated system of administrative evaluation based on an enhanced Administrators Evaluation Committee-style survey. In addition to quantitative data that is retained, qualitative data that is not retained should be read by the Provost and/or designated members of the Provost's Office, who will be responsible for reporting "red flag" complaints to OIE.

For faculty and staff, University prevention and support efforts concerning sexual misconduct across the three campuses and Michigan Medicine are uneven, under-resourced, and uncoordinated. Support for survivors is especially inadequate. Further inquiry is needed to address the question of a system-wide coordinated approach versus strengthening localized systems, as well as what steps would actually prevent sexual abuse in the university context.

Respectfully Submitted

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