Faculty Senate

November 18, 2019
Presenters

○ Jim Burkel, Assistant Vice Provost for Academic and Faculty Affairs

○ Christine Gerdes, Special Counsel to the Provost

○ Sascha Matish, Associate Vice Provost for Academic and Faculty Affairs and Senior Director, Academic Human Resources

○ Patty Petrowski, Associate Vice President and Deputy General Counsel, and Adjunct Lecturer in the Law School
Overview of Today’s Presentation

- Background
- SPG
- Umbrella Policy
- Employee Procedures
- Student Procedures
- Comments, Questions, and Feedback
Background
Background

- In February 2018, President Schlissel announced U-M would engage an outside law firm to review its sexual misconduct policies and practices.

- U-M engaged the law firm of Hogan Marren Babbo & Rose to conduct a review.
Background

- The review focused on reporting mechanisms and written policies and procedures used by U-M to address sexual misconduct.

- The review applied to policies and practices institution-wide (including in Ann Arbor, the University of Michigan-Flint, the University of Michigan-Dearborn, and Michigan Medicine), as well as those that apply only to the Ann Arbor, Dearborn, or Flint campuses.
HMBR recommended, among other things, that the University:

- Adopt a single umbrella policy that addresses sexual misconduct broadly and applies to the entire University Community; and

- Revise its procedures applicable to Employees, Students, and Third-Parties.

Background

- Following the external review, President Schlissel charged a task team of subject matter experts from across the University to implement the external reviewer’s recommendations regarding an umbrella policy and procedures.

- The Task Team includes representatives from OGC, Provost and EVPAA’s Office, OIE, OSCR, SAPAC, UHR, Michigan Medicine, Dearborn, and Flint.

- On October 15, 2019, U-M released a draft SPG, Umbrella Policy, Employee Procedures, and Student Procedures for community feedback.

- UM will solicit feedback broadly until November 22, 2019.

- The draft policy and procedures largely codify and clarify existing U-M practice.
SPG

- Created a new SPG summarizing key provisions of umbrella policy and procedures.

- SPG will link to the Umbrella Policy, the Employee Procedures, the Student Procedures for all three campuses, and the Our Community Matters Resource Guide for each campus.

- SPG 601.29, Alcohol and Drug Policy, is similarly organized.
Umbrella Policy
Defines Prohibited Conduct

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

The scope of the Policy relates to sexual and gender-based harassment, misconduct, and discrimination.
Defines Responsible Employee

- Responsible Employees are employees who are required to promptly share with OIE all details they receive in the scope of their employment about Prohibited Conduct.

- “…University administrators and supervisors and employees in certain designated positions and units or departments,” (e.g., student life, athletics)

- The Policy includes an exhaustive list of all categories of employees who would be Responsible Employees.

- Failure to report could result in discipline.
Confidential Resources

Clarifies, and in some cases expands, the number of Confidential Resources to include the Center for Education of Women+ and Wolverine Wellness (Ann Arbor) and the Student Ombuds (Dearborn).

Existing Resources include CAPS, SAPAC, FASCCO, etc.
Employee Procedures
Employee Procedures are largely consistent with current policies and procedures, but now presented in a single set of procedures.
Key Provisions of Employee Procedures

● Continues current investigative practices:
   OIE conducts the investigation;
   Results in a report that summarizes all of the relevant evidence and includes a determination of responsibility;
   No pre-determination hearing for employees; and
   OIE finding may not be appealed.

● Faculty and staff may continue to use any grievance/appeal process applicable to their position to challenge sanction.
Key Provisions of Employee Procedures (cont.)

- Investigation report will identify by name all witnesses (change from current practice).
- Parties and witnesses may request Interim Measures.
- OIE, in consultation with other University offices, may approve Interim Measures, and if approved, HR will implement.
Key Provisions of Employee Procedures (cont.)

- Scope of sanctions is clearly set forth in the Procedures and sanctions will be shared with both parties.

- Time frame for completion is 115 days from commencement of investigation to sanctions.
Student Procedures
Student Procedures

- Draft Student Procedures remain consistent with the current Interim Student Sexual Misconduct Policy.

- The Interim Policy, effective in January 2019, was revised to comply with Sixth Circuit ruling requiring direct, live cross-examination.

- The Interim Policy has been under review since January.
Key Provisions of Student Procedures

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 cross-examine the other party and witnesses;

● Students have the opportunity to appeal the finding and sanctions; and

● Timeframe for completion is 120 days.
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.
Comments, Questions, Feedback?