Guiding Principles

Sexual and/or relationship misconduct have been identified as national problems that significantly impact college and university students. Federal and state laws place requirements upon colleges and universities to address issues of sexual and/or relationship misconduct. The University is committed to educating students, faculty, and staff about this topic; and to working with the surrounding communities to offer as great a variety of services as possible.

The University’s Student Code of Community Conduct expressly prohibits sexual and/or relationship misconduct. Sexual and/or relationship misconduct includes sexual harassment; sexual violence; sexual exploitation; domestic violence; dating violence and stalking. These terms are defined in Paragraph II of this policy to be consistent with federal and state laws, including Title IX.

This policy is supported by the Procedure for Addressing Sexual and/or Relationship Misconduct Allegations Against Students.

Prohibited Conduct

1. Sexual Harassment - includes unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual nature. Sexual harassment which is prohibited is such conduct that is so severe, pervasive, or objectively offensive that it effectively denies or limits the student’s ability to participate in or benefit from an educational program and/or University activities.

2. Sexual Violence - refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving effective consent. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, nonconsensual sexual contact, nonconsensual sexual intercourse, and/or sexual coercion. Sexual violence can be carried out by University employees, fellow students, students from other schools, or third parties. Sexual violence is a form of sexual harassment.

3. Dating Violence – is a pattern of assaultive and controlling behaviors that one person uses against another in order to gain or maintain power and control in
the relationship. The abusive and controlling behavior(s) intentionally cause fear, degradation and humiliation. Dating violence is committed by a person: (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.

4. Domestic Violence - includes felony or misdemeanor crimes of violence committed by a current or former spouse 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, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Michigan, or 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 Michigan.

5. Stalking - means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) Fear for his or her safety or the safety of others; or (B) Suffer substantial emotional distress

6. Sexual Exploitation - Taking nonconsensual, unjust or abusive advantage of another in a sexual or intimate context, including without limitation: prostituting another person, engaging in, permitting or facilitating nonconsensual viewing, photographing, videotaping, audio taping, or posting to the internet sexual or intimate activity (such as dressing, showering and similar activity of oneself or others), knowingly infecting another person with HIV or other sexually transmitted diseases and/or inducing incapacitation of another person with the intent to facilitate nonconsensual sexual intercourse or contact with that person.

Retaliation against anyone who files a complaint, who is named as a respondent, or who participates in the investigation, proceedings, resolution of a case, regardless of the outcome of the case, or acts as an advocate for others' rights, is expressly prohibited and could lead to further discipline.
Definitions

1. Course of conduct: two or more acts, including but not limited to, acts in which the alleged respondent directly, indirectly, or through third parties, undertakes action, method, device, or means to commit misconduct.

2. Effective consent: informed consent, freely and actively given, with mutually understandable words or actions which indicate a willingness to participate in mutually agreed upon activity.
   (A) In the absence of mutually understandable words or actions (a meeting of the minds on what is to be done, where, with whom, and in what way), it is the responsibility of the initiator, or the person who wants to engage in the specific sexual activity to make sure that they have consent from their partner(s).
   (B) Mutually understandable consent is a subjective standard. Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a mutually understandable agreement between them to do the same thing, in the same way, at the same time, with each other.
   (C) Consent which is obtained through the use of fraud or force whether that force be physical force, threats, intimidation, or coercion, is ineffective consent;
   (D) Effective consent may never be given by minors to legal adults (statutory rape), by mentally disabled persons, or by physically incapacitated persons. One who is physically incapacitated as a result of alcohol or other drug consumption (voluntary and involuntary), or who is unconscious, unaware, or otherwise physically helpless, is also incapable of giving effective consent. One may not engage in sexual activity with another who one knows or should reasonably have known is physically incapacitated. Incapacitation means being in a state where a person lacks the capacity to appreciate the fact that the situation is sexual or cannot appreciate (rationally and reasonably) the nature and/or extent of that situation.

3. Hostile Environment Sexual Harassment: occurs when unwelcome conduct of a sexual nature creates an intimidating, threatening or abusive working or learning environment and is so severe, persistent, or pervasive that it affects a person’s ability to participate in or benefit from a University program or activity.
4. Intercourse: vaginal or anal penetration by a penis, object, tongue or finger; and oral copulation (mouth to genital contact or genital to mouth contact).
5. Quid pro quo (meaning “this for that”) sexual harassment: occurs when it is stated or implied that an academic or employment decision about a student or employee depends upon whether the student or employee submits to conduct of a sexual nature. Quid pro quo sexual harassment also occurs when it is stated or implied that an individual must submit to conduct of a sexual nature in order to participate in a University program or activity.
6. Rape: when a person forcibly subjects another person to sexual intercourse without consent.
7. Reasonable person: a person who behaves in a way that is legally appropriate. Such person exercises average care, skill and judgement in conduct.
8. Sexual assault: an assault of a sexual nature on another person.
9. Sexual battery: an unwanted form of contact with an intimate part of the body that is made for the purpose of sexual arousal, sexual gratification or sexual abuse.
10. Sexual coercion: the act of using pressure, alcohol or drugs, or force to have sexual contact with someone against their will.
11. Sexual contact: any intentional or reckless contact with the breasts, buttocks, groin, mouth, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts.
12. Substantial emotional distress: anxiety, sorrow or pain that is not mild or brief, and is so substantial or long lasting that a reasonable person would not be expected to bear it.

Interpretive Rules for Sexual and/or Relationship Misconduct Charges

1. The person who is the object of sexual and/or relationship misconduct is not required to physically or otherwise resist a sexual aggressor.
2. Silence, previous sexual relationships, and/or current relationship with the alleged perpetrator (or anyone else) may not, in themselves, be taken to imply consent. Consent cannot be implied by attire, or inferred from the buying of dinner or the spending of money on a date.
3. Intentional use of alcohol/drugs by the student accused of sexual and/or relationship misconduct is not an excuse for violation of the sexual and/or relationship misconduct policy.
4. A student who deliberately drugs or attempts to persuade another to consume alcohol or drugs for the purpose of rendering that person incapacitated or sexually submissive/passive commits a violation of the sexual and/or relationship misconduct policy.

5. Effective consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly in words and/or by actions (because you cannot be expected to read the mind of your sexual partner(s)), and all sexual activity must cease.

6. An "intent to rape" is not required under this policy. The requisite intent for rape is demonstrated by engaging in the act of intercourse intentionally.

7. Effective consent has an expiration date. Effective consent lasts for a reasonable time, depending on the circumstances. Effective consent must be contemporaneous with the sexual activity involved.

8. Nonconsensual sexual contact or exploitation is not limited to strangers and can include acquaintances.

**Jurisdiction**

The jurisdiction of the University over sexual and/or relationship misconduct incidents is broad. The University will investigate and remedy, using the Procedures for Sexual and/or Relationship Misconduct, complaints of sexual and/or relationship misconduct:

- Regardless of the location of the incident,
- Regardless of the incident occurring during the course of a semester or during a semester break,
- As long as the alleged respondent is a current enrolled student, or was at the time of the incident,
- Regardless of the enrollment status of the alleged complainant,
- If the impact of the sexual and/or relationship misconduct incident is likely to have a substantial effect on campus life or activities of the alleged student victim or alleged student assailant,
- If the incident poses a threat of danger to other students.
- If alleged respondent is an inactive student and/or not currently enrolled, interim action(s) may be taken, i.e. place a hold on the student’s account and/or issue a campus ban.
- When allegations arise after a student has graduated regarding incidents that occurred before the student graduated, the University maintains the
right to investigate and remedy such complaints. If found to be responsible, a student could face revocation of his or her degree and/or other sanctions.

Statement of Intent Regarding Medical Emergency

The welfare of students in the University community is of paramount importance. At times, students and other individuals may need medical assistance. The University encourages students to offer assistance to others in need, and also for students to seek assistance for themselves. Sometimes students may be hesitant to seek or offer assistance due to concerns that their conduct violates University rules, or that a student in a medical emergency will be charged with a rule violation.

The University intends to exercise considerable discretion to avoid the finding of responsibility under the Student Code of Community Conduct in medical emergencies as defined in this policy for a student providing assistance, as well as for a student receiving assistance in cases of a medical emergency. Educational conditions may be imposed rather than conduct sanctions if appropriate based on the professional judgment of the Dean of Students or designee.

A “medical emergency” is defined as any situation where an individual’s physical and/or psychological health is at serious risk and immediate action must be taken to protect the individual or others.

This statement of intent applies only to administrative enforcement of the Student Code of Community Conduct and does not provide immunity/amnesty from arrest or criminal prosecution.

Attempts and Enhancements

Attempts to commit prohibited conduct may be punished to the same extent as completed violations. Repeated or aggravated acts of prohibited conduct may result in enhanced sanctions. Repeated or intentional failure to comply with imposed sanctions may result in enhanced sanctions. Conduct violations that are motivated by the offender's bias due to race, religion or cultural identity, disability, sexual orientation, gender or gender-identity, ethnicity/national origin, and/or other legally protected status may result in enhanced sanctions.
Interpretation

The list of prohibited conduct is neither complete nor all-inclusive. The University reserves the right to impose necessary and appropriate interim actions and the full range of sanctions in response to inappropriate student conduct which threatens the safety and security of the University community.

Process

The Procedures for Addressing Sexual and/or Relationship Misconduct provide a detailed explanation of the process that will be followed for complaints filed under the Sexual and/or Relationship Misconduct Policy. Under most circumstances, the investigation and final determination of a complaint will be completed within 60 business days, not including semester and/or holiday breaks, from the date on which the University receives notice of an alleged incident. The possible sanctions under the Sexual and/or Relationship Misconduct policy are enumerated in the Procedures for Addressing Sexual and/or Relationship Misconduct allegations. In the final determination of an investigation of a case of sexual and/or relationship misconduct, the range of sanction is from written warning to conduct expulsion.

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