

POLICY PROHIBITING TITLE IX SEXUAL HARASSMENT, SEXUAL MISCONDUCT, AND DISCRIMINATORY HARASSMENT

SLT 9.1

Date of Last Update:

August 19, 2022

Approved By:

- Senior Leadership Team

Responsible Office:

Office for Title IX and Institutional Equity

POLICY STATEMENT

I. Policy Statement

Grand Valley State University (GVSU or “University”) strives to maintain a university community characterized by respect for each other. This includes, but is not limited to, a commitment to providing an educational environment, workplace, programs, and activities that are free from all forms of harassment. Harassment includes sexual harassment prohibited by Title IX of the Education Amendments Act of 1972 and implementing regulations (“Title IX Sexual Harassment”), Sexual Misconduct, and Discriminatory Harassment (collectively “Harassment”), as defined below. The University recognizes that Harassment may have serious effects on the well-being of all members of the university community and therefore does not tolerate such behavior.

Upon receiving a report of an alleged violation of this Policy, the University will take prompt and appropriate action in response, including a review of the allegations and, if appropriate, an investigation and other appropriate action to put an end to the alleged misconduct. The University will take all steps necessary to enforce its Non-Retaliation Policy (See V.5. of this Policy) to protect those who report Harassment and/or are involved in an investigation of conduct prohibited by this Policy.

II. Jurisdiction

This Policy applies to Harassment by or against any member of the University community including faculty, staff, and students that occurs:

1. In the context of any GVSU education program or activity;

2. On campus or on property owned or controlled by GVSU;
3. At GVSU-sponsored events;
4. In buildings owned or controlled by GVSU's recognized student organizations; and/or
5. Off-campus where:
 - A. The effects of the Harassment effectively deprive someone of equal access to GVSU's educational programs or activities;
 - B. The Harassment has continuing effects on campus or in an off-campus GVSU-sponsored program or activity; and/or
 - C. The alleged harasser poses an immediate threat to the physical health or safety of any individual.

Nothing in this Policy prohibits GVSU's right to address and take appropriate action with respect to conduct that, while not prohibited by this Policy, is nevertheless inconsistent with GVSU's values, including respect for others.

III. Freedom of Expression and Academic Freedom

Because freedom of expression and academic freedom are fundamental to GVSU's academic mission and must be protected even when the views expressed are unpopular or controversial, GVSU will take both into account when determining whether Harassment has occurred and what type of remedy, if any, is appropriate. This Policy is not intended to proscribe or inhibit any form of speech that is protected by federal or state law, including the First Amendment, or any conduct which arises for legitimate academic and pedagogical purposes, including intellectual inquiry, debate, and dialogue.

More information about freedom of expression at the University is available at <https://www.gvsu.edu/dso/expressive-activity-at-gvsu-32.htm> and about Academic Freedom at [BOT 4.2.2](#).

IV. Responsible Party

GVSU's Director and Title IX Coordinator ("Title IX Coordinator"), Office for Institutional Equity and Title IX, is responsible for implementing and monitoring compliance with this Policy on behalf of GVSU. This includes monitoring compliance with federal and state laws and regulations, ensuring appropriate education and training, and administration of the reporting and response procedures concerning suspected or alleged violations of this Policy. The Vice President for Inclusion and Equity maintains the authority to designate an alternate responsible party.

Any questions regarding this Policy or conduct prohibited by it may be directed to the Title IX Coordinator:

Kevin Carmody
4015 James H. Zumberge Hall
(616) 331-9530
carmodke@gvsu.edu

Some types of Harassment may be criminal in nature and may be reported to GVSU's Police Department, at (616) 331-3255. In the case of an emergency, the matter should be reported to 911.

V. Definitions

1. Complainant

Any person who is alleged to be the victim of conduct that constitutes Harassment under this Policy.

2. Consent

Permission that is clear, knowing, voluntary, and expressed prior to engaging in and during a sexual act. Consent is active, not passive. Silence, or lack of resistance, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in sexual activity.

A. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.

B. Consent may be withdrawn at any time as long as the withdrawal is reasonably and clearly communicated by word or action. If consent is withdrawn, that sexual activity should stop.

C. Previous relationships or prior consent cannot imply consent to future sexual acts.

D. Consent cannot be given by an individual who one knows to be – or based on the circumstances should reasonably have known to be – incapacitated.

i. A person is incapacitated when they cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

ii. Incapacitation may result from the consumption of alcohol or other drugs,

sleep or unconsciousness, a physical or mental health condition, or involuntary physical restraint.

E. Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

F. An individual cannot consent who has been coerced, including being compelled by force, threat of force, or deception; who is unaware that the act is being committed; or who is coerced by a Supervisory or disciplinary authority.

G. Consent may not be given by a person who has not reached the legal age of consent under applicable law.

H. Being impaired by alcohol or drugs will never function as a defense for any behavior that violates this Policy.

3. Discriminatory Harassment

Discriminatory Harassment may include unwelcome conduct based on an individual's or group's, race, color, national origin, age, disability, familial status, height, weight, marital status, political affiliation, veteran status, military status, genetic information, or any other legally protected characteristic that interferes with performance, limits participation in University activities, or creates an intimidating, hostile, or objectively offensive environment when viewed from the perspective of both the individual and a reasonable person in the same situation.

A. Discriminatory harassment includes, but is not limited to, the following types of conduct when such conduct is based on an individual's or group's protected characteristic:

- i. Verbal abuse, slurs, derogatory comments or insults about, directed at or made in the presence of an individual or group.
- ii. Display or circulation of documents or pictures that are objectively offensive or degrading.
- iii. Physical contact or threatening language or behavior.
- iv. Damage to, trespass on, or theft of property.

4. Respondent

An individual who is alleged to have violated this Policy.

5. Retaliation

Any adverse action taken against a person because of their participation in a protected activity. That includes, without limitation, intimidating, threatening, coercing, or discriminating against any individual for the purpose of interference because that person has made a report or complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under this policy.

6. Sexual Misconduct

Sexual Misconduct is unwelcome conduct based on sex, sexual orientation, gender identity, and/or pregnancy that does not fall within the purview of Title IX Sexual Harassment because it does not meet the definition of Title IX Sexual Harassment and/or because the reported behavior falls outside the jurisdiction under Title IX.

Examples of Sexual Misconduct include, but are not limited to, the following:

- A. Unwelcome conduct based on sex, sexual orientation, gender identity, and/or pregnancy based on the circumstances and evaluated subjectively and objectively, that is determined by a reasonable person to be so severe, or pervasive that it effectively denies or limits a person equal access to participate in or benefit from the University's education program or activity.
- B. Conduct that meets the definition of Title IX Sexual Harassment but occurs off campus.
- C. Conduct that meets the definition of Title IX Sexual Harassment but occurs in a GVSU educational program or activity outside the United States such as in a GVSU study abroad program.

7. Title IX Sexual Harassment

Title IX Sexual Harassment is unwelcome conduct on the basis of sex, sexual orientation, gender identity and/or pregnancy that satisfies one or more of the following:

- A. *Quid Pro Quo Harassment*: An employee or agent of GVSU conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct.
- B. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.
- C. Sexual assault: Any forcible or non-forcible sex act proscribed by law. "Forcible sexual assault" includes sexual intercourse and fondling without consent. "Non-forcible sexual assault" includes incest and statutory rape.
 - i. "Sexual intercourse" includes oral, anal, and vaginal intercourse or

penetration, to any degree, with any part of the body or other object.

ii. “Fondling” is defined as touching of the genitals, buttocks, and/or breasts of another person for the purpose of sexual gratification, without consent.

iii. “Incest” is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

iv. “Statutory rape” is nonforcible sexual intercourse with a person who is under the statutory age of consent according to Michigan law.

D. *Dating violence*: Physical violence or the threat of physical violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with an individual, and the existence of such a relationship shall be determined based on factors such as the length and type of relationship, and frequency of interaction between the persons involved.

E. *Domestic violence*: Physical violence or the threat of physical violence committed by a current or former spouse or intimate partner of an individual, by a person with whom the individual shares a child in common, by a person who is cohabitating with or has cohabitated with the individual as a spouse or intimate party, by a person similarly situated to a spouse of the individual under applicable domestic or family violence laws.

F. *Stalking*: Knowingly or intentionally engaging in a course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

G. Only conduct that meets the definition of Title IX Sexual Harassment, that occurs in a University education program or activity, and that occurs against a person in the United States constitutes Title IX Sexual Harassment. An “education program or activity” includes locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the alleged sexual harassment occurs, including on campus or on property owned or controlled by the University, at University-sponsored events, or in buildings owned or controlled by a student organization that is officially recognized by the University.

VI. Reporting and Response Procedures

Any person may report Sexual Harassment/Sexual Misconduct to the Title IX Coordinator. Reports may be made in person, by regular mail, telephone, electronic

mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. In-person reports must be made during normal business hours, but reports can be made by regular mail, telephone, or electronic mail at any time, including outside normal business hours.

Individuals who have experienced Sexual Harassment/Sexual Misconduct have the option to report the matter to law enforcement, to the University, to both, or to neither, as the individual may choose. Individuals who do not wish to report or file a Formal Complaint and pursue an investigation under these procedures may contact confidential counseling or medical resources.

1. Employees

A. In the interest of ensuring that anyone experiencing potential Sexual Harassment are provided with support, resources, and options, unless identified as a confidential resource, **all university employees** are obligated to promptly report to the Title IX Coordinator or Deputy Coordinator incidents of sexual harassment, sexual violence, sexual misconduct, stalking, and relationship violence that:

- i. Are observed or learned about in their professional capacity
- ii. Involve a member of the university community or
- iii. Occurred at a university-sponsored event or on university property

B. Employees are only required to report Sexual Harassment/Sexual Misconduct of which they become aware in their capacity as a university employee, not in a personal capacity.

C. While student employees and third-party contractors are not included in this list, **Graduate Assistants and Resident Assistants** are obligated to report.

2. Confidential Resources

A. Certain University employees and volunteers provide important counseling, health, advocacy, and other support services to members of the University community. These employees must be able to assist individuals in receiving medical care, counseling, and support services without the requirement to report conduct to the University.

Therefore, employees and volunteers who work in the programs and roles designated below are exempt from this Reporting Protocol with regard to incidents disclosed to them during provision of services.

Exempt Programs and Roles

- University Counseling Center
- GVSU Campus Health Center
- GVSU Family Health Center
- Gayle R. Davis Center for Women and Gender Equity
- Employee Ombuds
- Student Ombuds

B. Employees and volunteers in exempt service programs and roles are not otherwise exempt from reporting incidents they witness or learn of in the workplace. For example, if an employee of an exempt service program witnesses sexual harassment or assault of a co-worker by another University employee or in the context of a University program or activity, the employee must report the incident.

C. Reporting Options and Resources: Exempt service programs are required to provide individuals with information regarding reporting options and available resources whenever possible, including (i) the right to file a complaint with Title IX and Institutional Equity and/or law enforcement; (ii) the University's prohibition of retaliation; and (iii) supportive resources, including counseling, medical, and academic.

D. Victim/Survivors of sexual offenses, including sexual assault, stalking, and dating/domestic violence, may also seek help from off-campus organizations that have trained professionals able to provide assistance to victims of sexual violence. These organizations are not associated with the University and therefore disclosure will not trigger a University response. Victim/Survivors may contact the following organizations for assistance:

- YWCA of West Central Michigan: 616-454-9922
- Resilience: Advocates for Ending Violence: 1-800-848-5991
- Safe Haven Ministries (Christian-affiliated): 616-452-1168
- Michigan Sexual Assault Help Line: 1-855-VOICES4

3. Third-Party & Anonymous Reporting

Any individual may make a report of an act of Sexual Harassment. The report may be made without disclosing the identities of the parties involved. However, the University's ability to respond to the third-party report of Sexual Harassment may be limited by the amount of information provided.

4. Procedures

GVSU's Procedures for Reporting and Resolving Allegations of Title IX Sexual Harassment, Sexual Misconduct and Discriminatory Harassment describe the necessary steps for resolving

concerns of violations of this Policy. Anyone wishing to report a violation of this Policy should refer to those Procedures.
