

INTERIM POLICY PROHIBITING HARASSMENT, DISCRIMINATION, RETALIATION, & SEXUAL MISCONDUCT (INCLUDING SEXUAL ASSAULT, INTIMATE PARTNER VIOLENCE, STALKING, & SEXUAL EXPLOITATION)

SLT 9.1

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Approved By:

- Senior Leadership Team

Responsible Office:

Office for Title IX and Institutional Equity

POLICY STATEMENT

GVSU is committed to providing an educational environment, a workplace, programs, and activities that are free from all forms of harassment, discrimination, retaliation, and sexual misconduct. This policy prohibits all forms of harassment and discrimination under Title IX of the Education Amendments of 1972, 2020 Title IX Regulations (34 CFR § 106), Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA), Title VII of the Civil Rights Act of 1964, and other applicable statutes, including the Elliott-Larsen Civil Rights Act, Michigan PA 453 of 1976. This policy prohibits a broad continuum of behaviors, some of which are not legally prohibited but which reflect GVSU's standards and expectations for a positive working and learning environment.

GVSU values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved. When an alleged violation of this policy is reported, the allegations are subject to resolution using GVSU's "Process A: Grievance Process Under 2020 Title IX Regulations," "Process B: Grievance Process for University Sexual Misconduct," or "Process C: Resolution Process for Discrimination & Harassment," as determined by the Title IX Coordinator, and as detailed in accompanying procedures.

Jurisdiction of this Policy

This policy applies to the education programs and activities of GVSU, to conduct that takes place on the campus or on property owned or controlled by GVSU, at GVSU-sponsored events,

or in buildings owned or controlled by GVSU's recognized student organizations.

This policy is also applicable to off-campus conduct where the effects of off-campus misconduct effectively deprive someone of equal access to GVSU's educational programs or activities; and/or has continuing effects on campus or in an off-campus sponsored program or activity; and/or the Respondent poses an immediate threat to the physical health or safety of any student or other individual.

Prohibited Conduct Under this Policy

1. **Sexual Assault:** having or attempting to have *sexual intercourse* or *sexual contact* with another individual by force or threat of force, without *consent*, or where the person is *incapacitated*, as defined below:

- a. **Sexual Contact:** any intentional sexual touching, however slight, with any object or body part, performed by a person upon another person, and includes:
 - i. Intentional touching of the breasts, buttocks, groin or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts;
 - ii. Making another touch you or themselves with or on any of these body parts;
 - iii. Causing another to touch one's intimate parts, disrobing or exposure of another without permission.
- b. **Sexual Intercourse:** vaginal or anal penetration, however slight, with any object or body part, performed by a person upon another person; and/or oral penetration involving mouth to genital contact, and includes:
 - i. Vaginal penetration by a penis, object, tongue, or finger;
 - ii. Anal penetration by a penis, object, tongue, or finger;
 - iii. Any contact, no matter how slight, between the mouth of one person and the genitalia of another person.

2. **Intimate Partner Violence:** any act of *Domestic Violence* or *Dating Violence* as defined below:

- a. **Domestic Violence:** any act of violence committed by any of the following individuals: (1) a current or former spouse or intimate partner of the victim; (2) person with whom the victim shares a child in common; (3) person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; and/or, (4) a resident or former resident of the victim's household in the event such household residents have a current or prior intimate relationship.
 - i. An incident of domestic violence can consist of a single act of violence or a pattern of violent acts that includes, but is not limited to, sexual or physical

abuse, or the threat to engage in such abuse.

b. **Dating Violence:** any act of violence committed by a person who is, or has been, in a social relationship of a romantic or intimate nature with the victim that does not fall within the definition of “domestic violence.”

i. Dating violence includes, but is not limited to, sexual or physical abuse or assault or the threat of such abuse or assault.

ii. For the purposes of determining Intimate Partner Violence, whether the relationship is of a romantic or intimate nature is determined by a variety of factors, including: (a) the length of the relationship, (b) the type of relationship, and (c) the frequency of interaction between the persons involved in the relationship.

iii. A relationship of a romantic or intimate nature means a relationship that is characterized by the expectation of affection or sexual involvement between the parties.

iv. An incident of dating violence can consist of a single act of violence or a pattern of violent acts that includes, but is not limited to, sexual or physical abuse, or the threat to engage in such abuse.

3. **Stalking:** when a person engages in a *course of conduct* directed at a specific person under circumstances that would cause a *reasonable person* to fear bodily injury or to experience *substantial emotional distress*.

a. *Course of conduct* means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person’s property.

b. *Reasonable person* means a reasonable person under similar circumstances.

c. *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

d. Stalking includes “cyber-stalking,” a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact. This policy prohibits all stalking, not just stalking that occurs within the context of a relationship.

4. **Sexual Exploitation:** taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited.

Examples include, but are not limited to:

- a. Causing the *incapacitation* of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give *consent* (as defined in this policy) to sexual activity;
- b. Allowing third parties to observe private sexual activity from a (a) hidden location (e.g., closet), or (b) through electronic means (e.g., Skype or live streaming of images);
- c. Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's intimate parts (including genitalia, groin, breasts or buttocks) in a place where that person would have a reasonable expectation of privacy);
- d. Recording or photographing private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
- e. Disseminating or posting images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
- f. Knowingly exposing another person to a sexually transmitted infection or virus without the other's knowledge;
- g. Arranging for others to have non-consensual sexual contact, as defined by this policy, with a non-consenting person.

5. **Sexual Harassment:** unwelcome or unwanted conduct of a sexual nature whether verbal or nonverbal, graphic, physical or otherwise, where *Quid Pro Quo* is present and/or rises to the level of creating a *Hostile Environment*.

6. **Gender-Based Harassment:** unwelcome or unwanted conduct based on gender, sexual orientation, transgender, gender non-conforming, transitioning, gender identity, or gender expression that may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, where *Quid Pro Quo* is present and/or rises to the level of creating a *Hostile Environment*.

- a. *Transgender* is an umbrella term that can be used to describe people whose gender identity and/or expression is different from their sex assigned at birth.
- b. *Gender non-conforming* describes people who have, or are perceived to have, gender characteristics and/or behaviors that do not conform to traditional or societal expectations.
- c. *Transition/Transitioning* is the process of changing one's gender from the sex assigned at birth to one's gender identity.

- d. *Gender Identity* is a personal, internal sense of oneself as, for example, male, female, both, or neither.
- e. *Gender Expression* is the external appearance of one's gender identity, or how one represents one's gender through hair style, clothing, mannerisms, etc.

7. Discriminatory Harassment: conduct on the basis of that person's actual or perceived membership in one or more of the protected classes listed below, that could reasonably be understood as having the purpose or effect of creating an intimidating, hostile, or offensive environment; having the purpose or effect of unreasonably interfering with an individual's work performance or access to educational activities and programs; adversely affecting an individual's employment opportunities or access to educational activities and programs.

- a. *Protected Classes* are age, color, disability, familial status, gender, gender expression, gender identity, gender non-conforming, height, marital status, national origin, political affiliation, race, religion, sex, sexual orientation, transgender, transitioning, veteran or active duty military status, or weight.

8. Retaliation: taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual: reported an incident of prohibited conduct under this policy, participated in a grievance process related to this policy, supported an impacted party, assisted in providing information relevant to an investigation, and/or acted in good faith to oppose conduct that constitutes a violation of this policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. GVSU will take all appropriate and available steps to protect individuals who are concerned that they may be subjected to retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation.

- a. Retaliation under Title IX also includes:

Charges against an individual for conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Charging an individual with a conduct violation for making a materially false

statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

9. Title IX and Sexual Misconduct

- a. Title IX defines sexual harassment as conduct on the basis of sex that satisfies one or more of the following:
 - i. An employee of GVSU conditioning the provision of aid, benefit, or service of GVSU on an individual's participation in unwelcome sexual conduct;
 - ii. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to GVSU's education programs or activities; or
 - iii. "Sexual assault" as defined in [20 U.S.C. 1092\(f\)\(6\)\(A\)\(v\) \(forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation\)](#), "dating violence" as defined in [34 U.S.C. 12291\(a\)\(10\)](#), "domestic violence" as defined in [34 U.S.C. 12291\(a\)\(8\)](#), or "stalking" as defined in [34 U.S.C. 12291\(a\)\(30\)](#).

1. When evaluating responsibility for alleged Prohibited Conduct, GVSU considers the presence or absence of the following:
 - a. **Consent** is affirmative, informed (knowing), voluntary (freely given), and clearly communicated by word or action.
 - i. Consent can be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.
 - ii. When evaluating whether the Complainant has given consent, GVSU will also consider the presence of physical violence, threats, intimidation, and/or coercion.
 - iii. 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.
 - iv. Consent cannot be obtained by taking advantage of the *incapacitation* of another, where it was known, or reasonably should have been known, that the other was incapacitated.
 - a. *Incapacitation* is such that it renders the person incapable of self-care

and protection and occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give informed (knowing) consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

I. Incapacitation could be the result of alcohol, other drugs, sleep or unconsciousness, a temporary or permanent physical or mental health condition, or involuntary physical restraint.

- b. **Quid Pro Quo** is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature made by a person having power or authority over another constitutes sexual harassment when submission to sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual’s educational or employment progress, development or performance. This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational or employment program.
- c. **Hostile Environment** is sufficiently severe, or persistent or pervasive, and objectively offensive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from GVSU’s education or employment programs and/or activities.

Required Reporting

When a **Mandatory Reporter** (as defined below) is notified of sexual misconduct, including sexual assault, stalking, intimate partner violence (dating/domestic violence), sexual exploitation, sexual harassment, or gender-based harassment, they must immediately report the information to the Title IX Coordinator. Following the filing of the report with the Title IX Coordinator, the Mandatory Reporter will keep all information they receive private. Federal and state funding is premised on compliance with the laws and guidance referenced in this policy.

While all employees are encouraged to report, Mandatory Reporters at GVSU are:

- Members of the Board of Trustees, as required by state law;
- Executive Officers and Appointing Officers;
- Deans, directors, department heads/chairs (including those serving in assistant or associate roles);
- Supervisors;
- GVSU faculty or staff providing oversight to, or traveling with, students on GVSU-related travel, including GVSU-sponsored study abroad, research, fieldwork, clinicals or

internship programs;

- Faculty and staff, who serve as advisors to or coaches of GVSU-recognized student groups;
- Any individual, whether an employee or not, who serves as a coach of a club sports team;
- All employees, including student-employees (while working), working in the Division of Student Affairs (including Resident Assistants at all times), Division of Inclusion and Equity, Enrollment Development Division, Department of Public Safety, and Athletics, except those who serve in non-supervisory clerical capacities;
- Campus Security Authorities designated by GVSU under the Clery Act not otherwise specified;
- Individuals serving in any of the positions described above on an acting or interim basis.

Failure of a Mandatory Reporter, as described above in this section, to report an incident of which they become aware is a violation of this policy and can be subject to disciplinary action.

GVSU's Statement on Non-discrimination

Grand Valley State University does not discriminate against students, faculty or staff in any of its employment practices or in its educational programs or activities. Grand Valley State University is guided by values for inclusiveness and community which are integral to our mission to educate students to shape their lives, their professions, and their societies, and to enrich the community through excellent teaching, active scholarship, and public service.

The University is an affirmative action, equal opportunity institution. It encourages diversity and provides equal opportunity in education, employment, all of its programs, and the use of its facilities. Members of the University community, including candidates for employment or admissions, and visitors or guests, have the right to be free from acts of harassment and discrimination, which are prohibited if they discriminate or harass on the basis of age, color, disability, familial status, height, marital status, national origin, political affiliation, race, religion, veteran or active duty military status or weight. In addition, Grand Valley is required by Title IX of the Education Amendments of 1972 to ensure that none of its education programs and activities discriminate on the basis of sex/gender. Sex includes sex stereotypes, gender identity, gender expression, sexual orientation, and pregnancy or parenting status.

The Office for Title IX and Institutional Equity serves as a resource for the GVSU community and assists individuals who may have been impacted by discrimination or harassment in connecting with resources, imposes measures that protect or support access to programs and activities, and oversees the university's grievance process for allegations of discrimination and harassment. Inquiries regarding the application of Title IX may be referred to the Title IX

Coordinator, 4015 Zumberge Hall, titleix@gvsu.edu, (616) 331-9530.

PROCEDURES

Procedures for responding to reports of Harassment, Discrimination, Retaliation, & Sexual Misconduct (including Sexual Assault, Intimate Partner violence, Stalking, & Sexual Exploitation) under this policy are published at gvsu.edu/titleix/procedures.
