

## House of Representatives Sexual Assault Legislative Package

*House Law and Justice Committee / May 2, 2018*

### Comments From:

- Daniel Hurley, CEO, Michigan Association of State Universities (MASU)
- Melody Werner, Title IX Coordinator, Eastern Michigan University, Chair of the MASU Title IX Coordinators Committee
- Pamela Heatlie, Associate Vice Provost, Senior Director, Title IX Coordinator, Office of Institutional Equity, University of Michigan




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## Thank You

- Shared commitment to sexual assault prevention and response
- Informed, deliberative approach to legislation
- Receipt of input from stakeholder groups
- Partnership with the state's public universities to end sexual violence—on campus, in our communities, in society




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## Commitment to Campus Sexual Assault Prevention and Response

- Diligence in ensuring campuses are safe places to learn, live, and work
- Transparency and Accountability—Budget Boilerplate
  - Extensive and continual outreach on sexual violence prevention (Sec. 274c reports)
  - Transparency in reporting (Clery Act / Sec. 245 transparency website / Sec. 274d report)




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### Commitment to Campus Sexual Assault Prevention and Response

- MASU Title IX Directors Committee
- Collaboration with MI Domestic and Sexual Violence Prevention Treatment Board
- Partnership with First Lady Sue Snyder
  - MI State Police campus sexual assault prevention program
  - Campus sexual assault prevention summits
  - Campus resource handbook
  - Forthcoming—Expanded work group
    - Campus best practices
    - Regional collaboration




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### Campus Sexual Assault Prevention and Response: Federal Laws and Compliance Structure

- Title IX of the Education Amendments of 1972
  - Enforced by every federal agency, primarily the U.S. Department of Education, Office for Civil Rights
  - Numerous relevant guidance documents
- The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act
  - Enforced by the U.S. Department of Education
  - Clery Handbook
- The Violence Against Women Reauthorization Act of 2013 (amends Clery)
- The Federal Educational Rights and Privacy Act of 1974
- U.S. Constitution – Due Process Clause
- U.S. Constitution – First Amendment




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### What Does Title IX Do?

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**Moving Forward:  
Principles of Sexual Assault Legislation**

- Assurance of privacy for all parties
- Integration of survivor/advocacy perspective
- Avoidance of unintended consequences
- Alignment with existing Federal law
- Promotion of system/process improvement



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# **Title IX and Campus Sexual Misconduct Overview**

**House Appropriations: Higher Education Subcommittee**

**March 8, 2018**

**Felicia Crawford**

**Western Michigan University**



# Title IX and Campus Sexual Misconduct

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- Legal and Political Landscape Evolves
- University Responsibilities
- Criminal Process
- Basic University Investigation Process
- Environmental Considerations

# Legal and Political Landscape Evolves

U.S. Department of Education, Title IX of the Education Amendments Act, 1972:

*"No person in the United States shall, on the basis of sex [or gender], be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."*

1972

Title IX

1992

Victim's Bill  
of Rights  
(Clery)

2000 Clery and

Violence Against  
Women Act (VAWA)

1990

Clery Act

1997 OCR

Sexual  
Harassment  
Guidance



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# Legal and Political Landscape Evolves

2001 Revised OCR SH Guidance	2013 Campus Save Act (VAWA amends Clery)	2016 Transgender "Dear Colleague" Letter	2017 Rescinded 2014 FAQ's, 2011 & 2016 "Dear Colleague" Letters
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2011 TIX  
"Dear  
Colleague"  
Letter

2014  
Title IX  
FAQ's

2017  
Biden  
Letter of  
TIX  
Support

2017  
Interim  
Guidance  
Issued

Lens: Case Law/Resolution Agreements



# University Responsibility

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- **What** – Provide an environment free of discrimination, including sexual and gender-based harassment and violence, intimate partner violence and stalking. This includes discrimination based on a pregnancy-related condition, parental, family or marital status.
- **Who** – Faculty, staff, students and visitors.
- **When** – During University activities and programs, or anytime faculty, staff and students are involved
- **Where** – Both on and off campus, even on study abroad

# University Responsibility

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## PROHIBITED BEHAVIORS

- Sexual harassment
- Sexual assault
- Non-consensual sexual contact
- Sexual exploitation
- Harm to others
- Stalking
- Intimate partner violence
- Retaliation

(PER WMU SEXUAL MISCONDUCT POLICY)

The University is responsible for responding if it knew, or **should have known**, about sexual misconduct.

We must respond

promptly, effectively, and equitably to:

- Assess and investigate
- Stop the behavior
- Remedy the effects
- Prevent the recurrence

# University Responsibility

## Report Sexual Misconduct

### Simple approach:

- Report crimes to the police
- Report sexual misconduct to the

Title IX Coordinator or

designee

Some incidents may be both

## University Sexual Assault and Misconduct Policy

**HOME**  
**ABOUT**  
**SCOPE**  
**REPORT AN INCIDENT**  
**PRIVACY AND CONFIDENTIALITY**  
**RESPONDENTS**  
**PREVENTION, EDUCATION AND TRAINING**  
**CONTACT**

Western Michigan University encourages all members of our community to participate in the process of creating a safe, welcoming and respectful environment on campus. With the Sexual and Gender Based Harassment and Violence, Intimate Partner Violence, and Stalking Policy and Procedures, we affirm the commitment of the university and our community to the values of transparency and timely communication, and accountable and responsible behavior within an ethical, compassionate, diverse and respectful environment.

If you are in danger or in need of immediate assistance, call 911.

Read the [Full Policy](#) in its entirety.

[Sexual Misconduct and Safety](#) - [Campus Resources Guide](#)

Report an incident using the online form

[ONLINE REPORTING FORM](#)

Office of Institutional Equity  
Western Michigan University  
Kalamazoo MI 49008-5405 USA  
12621 387 6316

# Criminal Process

The criminal process is completely separate from the Title IX process

- Different process – subpoenas, search warrants
- Different behavior is covered
- Different standard of proof applies
- Prosecutor has discretion – Universities do not



A complainant may elect to participate in the criminal and/or the university processes. They may elect not to participate in either.



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# Basic University Investigation Process

## ASSESSMENT

- Meet with the complainant (may bring a support person).
- Discuss the incident and available support resources. Offer interim safety measures such as issuing a “no contact” order, changes in the work environment, housing or classes if needed. Discuss resolution options (police, informal, investigation). For sexual assault, consider options for a certified Sexual Assault Nurse Exam, sexually transmitted infections and pregnancy.
- Meet with the respondent (may bring a support person)
  - Discuss the incident and available support resources.
- Meet with any witnesses, collect and review evidence.

## Basic University Investigation Process (cont.)

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- Create an investigative report and give the complainant and respondent an opportunity to review and respond to it.
- Determine, using the preponderance of evidence standard, whether the respondent is responsible for violating the Sexual Misconduct Policy.
- If responsible, student cases go to Student Conduct for sanctioning, faculty and staff cases go to HR/Administration for disciplinary action process based on employee classification.
- While the sanction or disciplinary action may be appealed, the finding is final.

# Environmental Considerations

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- May have one very unhappy and motivated party at the end of the process
  1. No action taken/Not responsible = swept under the rug
  2. Action taken/Responsible = steamrolled by Title IX
  3. Enforcement of privacy rights = cover up
  4. Growing lobbying groups and activism on all fronts
- Multiple constituencies: complainants, respondents, governmental oversight (DOE/OCR, MDCR), advocates, parents, press





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# Questions?

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Presentation content from:

WESTERN MICHIGAN UNIVERSITY  
CARRICK D. CRAIG, GENERAL COUNSEL  
FELICIA CRAWFORD, DIRECTOR TITLE IX COMPLIANCE





### **Information for Student Claimants**

**We are neutral.** The Investigator does not take sides. We are committed to providing a fair and unbiased review, and our investigations are focused on the information available. We also help Claimants and Respondents by providing information about support and advocacy services. If you have a concern that the Investigator cannot conduct a fair and unbiased review (e.g., has a personal connection with one of the parties or witnesses, etc.), please contact the Title IX Coordinator immediately. The Title IX Coordinator may be reached at 734-763-0235 or [institutional.equity@umich.edu](mailto:institutional.equity@umich.edu). The situation will be assessed and a determination made as to whether a different investigator should be assigned to the matter.

**Support person.** The Claimant may bring a support person with them to any meetings with the Investigator. We request that the Claimant please let us know in advance if they will be doing so. Examples of a support person/advisor may include, but are not limited to: a friend, family member, SAPAC Advocate, attorney, etc. An individual who may be a witness in the investigation may not be present during the Claimant's interview.

**Anonymity and confidentiality.** Information provided to OIE may be shared with other University officials as necessary and appropriate. Respondents are provided enough information about the allegations to allow them a fair opportunity to respond, and the level of detail necessary to do that varies depending on the circumstances surrounding the incident and confidentiality concerns. OIE will consider requests for Claimant anonymity on a case-by-case basis, consistent with the Policy.

**Interim measures and academic accommodations.** In many cases, interim measures may be appropriate. Such measures may include separation of the Claimant's and Respondent's academic, living, and/or dining situations, or such other measures as may be appropriate under the circumstances. OIE will ask Claimants about interim measures, although they sometimes are in place before the Claimant meets with OIE. In addition to interim measures, Claimants sometimes need academic accommodations. These accommodations are arranged by SAPAC and/or the Dean of Students, but a Claimant may also raise this need with OIE, who will inform SAPAC/Dean of Students of the requested accommodation.

**Criminal investigations and preservation of evidence.** The University process for addressing sexual misconduct is separate from a criminal investigation. You have the right to file a police report regarding possible criminal behavior. We can connect you with a staff member who can assist you in making a report to law enforcement if you would like. Even if you are not sure that you want to file a police report, *it can be helpful to have any available evidence collected in case you decide to file a report with law enforcement at a later date.* More information is available in the attached resource guide, and the University of Michigan Police Department (UMPD) can be reached at [\(734\) 763-1131](tel:7347631131).

**Interviewing the Claimant.** The first step the Investigator takes in an investigation is to gather information about the concern at issue. This usually involves interviewing the Claimant and gathering information from them, including documentation and names of witnesses, if any. Claimants are strongly encouraged to share all information they have regarding the matter.

**Interviewing the Respondent.** After the Investigator understands the nature and scope of the concern at issue, the Respondent is asked about the allegations and given a full and fair opportunity to respond. The Respondent is also asked to provide any documentation and identify witnesses relevant to the complaint. Respondents are strongly encouraged to share all information they have regarding the matter. The Claimant is not present during the Respondent's interview and vice versa.

**Gathering other information.** The Investigator interviews witnesses (if they choose to participate with the understanding they will be identified by name in the report) and reviews all documentation deemed relevant to the situation. The Investigator may also contact the Claimant and Respondent with additional questions or to request additional information. OIE does not accept the results of polygraph tests and related evidence.

**Review of preliminary investigation report.** If the Investigator determines that a written investigation report will be produced, the Claimant and Respondent, if participating in the investigation, will typically be provided with a preliminary investigation report, which is a written summary of the relevant information provided by the persons interviewed (Claimant, Respondent and other witnesses) and documentation or other information reviewed by the Investigator. The preliminary investigation report does not include a finding. The Claimant and Respondent are given the opportunity to comment on the preliminary investigation report. The Investigator reviews the comments submitted by the parties, if any, and determines whether the report should be modified. The Investigator considers all comments from the parties in reaching a determination on the matter.

**All information or documentation provided by either party, or by a witness interviewed in the course of an investigation, may be included in the final Investigation Report and shared with the other party to this matter and relevant University officials.**

**Decision and follow up.** After receiving the Claimant's and Respondent's comments, if any, the Investigator analyzes the information, reaches a conclusion and after internal review provided for in the Policy, issues the investigation report. The investigation report is forwarded to the Office of Student Conflict Resolution, which informs the parties of the finding, makes the investigation report available to them and notifies them of and applicable appeal and/or sanctioning processes. OSCR will not share this information with a party who has asked not to receive this type of follow up.

**Retaliation.** The University prohibits retaliation. Claimants or witnesses who feel they are being subjected to retaliatory behavior are strongly encouraged to immediately contact OIE.

**Resources for support.** The University offers a variety of services to support to students, a short list of which is included below. The OIE investigator can provide additional information about the resources, as requested. If what you reported to OIE might also be a criminal offense, you may also report it to the police, either UMPD if it occurred on campus or local police if it occurred off campus. If you are concerned for your safety, call 9-1-1 immediately.

- Sexual Assault Prevention and Awareness Center 734/936-3333
- Counseling and Psychology Services 734/764-8312 or [www.umich.edu/~caps](http://www.umich.edu/~caps)
- After hours UM Psychiatric 734/996-4747
- Dean of Students 734/764-7420
- UM Student Legal Services 734/763-9920
- Graduate Student Crisis 800/GRAD-HLP (800/472-3457)
- Crisis Line 800/273-TALK (8255)
- [www.crisischat.org](http://www.crisischat.org)
- UM Police Department 734/763-1131; Ann Arbor Police Department 734/794-6900

**More information.** If you have any other questions about the investigation or investigation process, please do not hesitate to contact the staff member investigating your case at 734/763-0235.

**This information was reviewed with me and I was offered the opportunity to ask questions before proceeding.**

**At this point, I would like - would not like - not sure - an OIE investigation of my concerns to occur. (circle one)**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Claimant's Name (please print)

\_\_\_\_\_  
Date