

Sexual Misconduct Policy

Relationship Violence, Sexual Misconduct, and Stalking Policy and Procedure (Interim Policy)

Date Approved: 7-30-2020

Last Revision: 9-29-2021

Last Reviewed: 9-29-2021

Approved by: Board of Trustees

Oversight unit: EQUAL OPPORTUNITY

Attached form file: [AppendixA.pdf](#)

[AppendixB.pdf](#)

[Appendix C.pdf](#)

This policy has a related procedure. [Click to view the procedure below.](#)

Purpose

This policy prohibits specific forms of relationship violence (dating violence/domestic violence), sexual misconduct (sexual assault, sexual exploitation, and sexual or gender-based harassment), and stalking, collectively referred to as “Prohibited Conduct.” Through this policy and supporting procedures, Northern Michigan University (“NMU”) addresses Prohibited Conduct pursuant to its obligations under state and federal law.

Applicability

This policy applies to Prohibited Conduct by NMU Community Members, (students, faculty, and staff), and/or third parties against NMU Community Members. The rights, obligations and privileges included within this policy may not apply to all parties depending on the circumstances of each allegation.

NMU has expanded the scope and applicability of the policy beyond the requirements of the Title IX final regulations, issued on May 6, 2020. NMU reserves the right to interpret and apply these expanded protections in its sole discretion. This policy and related procedures are not intended to, and should not be construed to, establish a contract between NMU and any NMU Community Member or to increase NMU's obligations or responsibilities beyond those required by federal or state law.

This policy applies when prohibited conduct occurs:

- On NMU property; or
- Off NMU property, including online or electronic conduct, if an NMU Community Member is involved or impacted, if the conduct:
 - Occurs during an NMU program or activity; or
 - Occurs in connection with NMU-sponsored events; (e.g., field trips, social functions, student organization events, NMU-related business, NMU travel, study abroad programs, student recruitment activities, and service learning/internship experiences); or
 - May pose a serious threat of harm to any NMU Community Member(s); or
 - May have the effect of creating a hostile environment for any NMU Community Member(s).

This policy also enables NMU to initiate measures to support current NMU Community Members regardless of where the Prohibited Conduct occurred.

Policy

Northern Michigan University is committed to fostering and maintaining a safe and healthy academic, work, and living environment, which safeguards the applicable due process rights of all NMU Community Members, including Complainants and Respondents. Prohibited Conduct is inconsistent with the standards and ideals of the NMU community. NMU will take prompt and suitable action to investigate and stop Prohibited Conduct; prevent its recurrence; and, as appropriate, remedy its effects.

Complainant - Initiating a Formal Complaint Under Title IX

In order to give notice and provide actual knowledge to NMU to trigger NMU's legal response obligations under Title IX and this policy, a complainant or other reporting person must file a formal complaint with the Title IX Office and cooperate during the investigation. To file a formal complaint, a complainant or other reporting person should contact the Title IX Office at:

Title IX Office of Northern Michigan University
105 Cohodas Hall
Marquette, MI 49855
Phone: 906-227-2420

Email: TitleIX@nmu.edu

Campus Reporters - Employees Required to Report to Title IX Coordinator/Deputy Coordinators

All employees, except those specifically identified below, are designated as Campus Reporters, and must report, by policy, incidents of Prohibited Conduct observed as well as incidents reported to them. Campus Reporters must report to an Official with Authority (OWA). At NMU, the OWA are the Title IX Coordinator and the Deputy Title IX Coordinator, who are assigned to implement corrective measures for Prohibited Conduct.

Employees of NMU Counseling and Consultation Services and the NMU Health Center are designated as Confidential Resources. Confidential Resources will not typically be required to make a report to the OWA without the permission of the person reporting; specific exceptions are allowed by law and regulation, including but not limited to the protection of a minor child, protecting persons at high risk for violence, or to adhere to a court order.

Confidentiality/Anonymity

NMU will treat all information it receives as part of reporting procedures with discretion and will keep all information confidential to the extent permitted or required by law. All OWA and employees integral to Prohibited Conduct processes must receive specific training about respecting and safeguarding private information. Persons who wish to strictly protect the confidentiality of information are encouraged to report to Confidential Resources.

A complainant or reporting person may make a confidential or anonymous report of Prohibited Conduct. However, depending on the circumstances, including the nature of the allegation and availability of evidence, NMU's ability to investigate and respond to the complaint, or to provide an appropriate remedy, may be limited.

Standard of Evidence

NMU will apply the preponderance of the evidence standard to determine responsibility under this policy. Preponderance of the evidence means that it is more likely than not, based on all the reasonable evidence and reasonable inferences from the evidence, that an event or action violated NMU policy.

Training and Resources

The Title IX Office will be responsible for the development and implementation of all required training and resources to support this policy.

Related Policies

All incidents of Prohibited Conduct will be handled through this policy and the procedures developed and approved by the Office of the President.

Incidents of discrimination may be handled through other applicable policies, and may include the Non-discrimination Policy. NMU follows all state and federal regulations regarding harassment, and discrimination, as defined in the NMU Non-discrimination Policy.

It is a violation of NMU policy to intimidate, discipline, discharge, or harass any individual who has in good faith reported Prohibited Conduct or participated in any proceeding under this policy. Individuals and groups of individuals are prohibited from engaging in retaliation and will be held accountable under NMU's Retaliation Policy.

Interim Relationship Violence, Sexual Misconduct and Stalking Guidelines and Procedures

Procedure

Introductory Information

The following sections provide guidelines, as well as the processes NMU will follow when the University receives notice and/or a Formal Complaint that an NMU Community Member has engaged in Prohibited Conduct as defined in this Policy.

NMU takes complaints of Prohibited Conduct seriously, follows the law and operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

Nothing in the Relationship Violence, Sexual Misconduct and Stalking Policy or Procedures is intended to limit constitutionally protected First Amendment rights, Due Process rights of the 5th and 14th Amendments, or restrict any other Constitutional rights.

First Amendment free speech rights protect speech on matters of public interest. They do not protect illegal activity, Prohibited Conduct, destruction of property, or material and substantial disruption of classes or campus activities.

Amnesty for Good Faith Reporting

NMU will not pursue disciplinary action against students (Complainants or witnesses) for disclosure of personal consumption of alcohol or other drugs (underage or illegal) where the disclosure is made in connection with a good faith report or investigation of Prohibited Conduct.

This Amnesty for Good Faith reporting does not apply to a Respondent causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity.

Obligation to Provide Truthful Information

NMU Community Members are expected to provide truthful information in any report or proceeding under this Policy. Submitting or providing false or misleading information in bad faith or with a view for personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions under the Student Code of Conduct or appropriate employee disciplinary action. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

Withdrawals, Resignations, and Graduation

If a student Respondent withdraws or is no longer enrolled with NMU before a Complaint/Grievance Process is initiated, NMU will stop the Complaint/Grievance Process until the Respondent initiates re-enrollment. If a student Respondent is no longer enrolled with NMU prior to the final conclusion of a Complaint/Grievance Process already initiated, NMU will continue those processes, to the extent it is able, whether or not the Respondent elects to continue participation.

Regardless of whether an NMU employee is currently employed, NMU will investigate to the best of their ability.

Consent, Incapacitation, and Sexual Coercion

Consent

These procedures and guidelines define consent as the voluntary, informed, and freely given agreement, through words and/or actions, to participate in mutually agreed-upon sexual acts. Consensual sexual activity happens when each partner willingly and affirmatively chooses to participate in each sexual act.

In evaluating whether consent has been freely given, NMU will consider the presence of any force, threat of force, or coercion; whether the Complainant had the capacity to give consent; and, whether the communication (through words and/or actions) between the Parties would be interpreted by a reasonable person as a willingness to engage in a particular sexual act.

Consent cannot be gained by force or coercion or by taking advantage of another person's incapacitation. Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. Coercion is conduct, including intimidation and/or expressed or implied threats of immediate or future physical or other harm to the Complainant or others, that would reasonably place an individual in fear and that is employed to compel someone to engage in sexual activity.

Important points regarding consent include:

- A person who initiates a specific activity is responsible for obtaining consent for that activity.
- Consent to engage in one sexual activity is not consent to engage in a different sexual activity or to engage in the same sexual activity on a later occasion.
- Consent can be withdrawn or modified at any time, and sexual contact must cease immediately once consent is withdrawn.
- Consent cannot be inferred from silence, passivity, or lack of resistance; relying solely upon non-verbal communication can lead to a false conclusion about whether consent was sought or given.
- Consent is not to be inferred from an existing or previous dating or sexual relationship. Even in the context of a relationship, there must be mutual consent to engage in any sexual activity.
- Consent to engage in sexual activity with one person is not consent to engage in sexual activity with any other person.
- Under Michigan law, individuals younger than 16 years of age are legally incapable of giving consent to sexual activity.
- Under Michigan law, individuals older than 16 years of age may not be legally capable to give consent if there is a special relationship.

Incapacitation

Incapacitation (Incapacitated) means a person's inability, temporarily or permanently, to communicate a willingness to participate in an activity (e.g., sexual contact or sexual penetration) because of mental or physical helplessness, sleep, unconsciousness, or other lack of awareness that the activity is taking place.

Incapacitation can be voluntary or involuntary. Signs of incapacitation may include, without limitation: sleep; total or intermittent unconsciousness; lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness; vomiting; incontinence; unresponsiveness; and inability to communicate coherently. Incapacitation is an individualized determination based on the totality of the circumstances. Alcohol and drugs may be causes of incapacitation.

In evaluating consent where the question of incapacitation is at issue, NMU considers two questions: (1) did the person initiating sexual activity know that the other Party was incapacitated, and if not, (2) should a reasonable person, in the same situation, have known that the other Party was incapacitated? If the answer to either question is yes, then there has not been consent.

One should be cautious before engaging in sexual activity when either Party has been drinking alcohol or using other drugs. The use of alcohol or other drugs can lower inhibitions and create an atmosphere of confusion about whether consent is effectively sought and freely given. If there is any doubt as to the level or extent of one's own or the other individual's intoxication or incapacitation, the safest course of action is to forgo or cease any sexual contact.

Sexual Coercion

Sexual coercion is the use of an unreasonable amount of pressure to gain access to sexual acts. Sexual coercion is more than an effort to invite, entice, or attract another person to have sex. When a person does not consent to a particular form of sexual contact, sexual interaction, or sexual intercourse, continued pressure can be coercive.

In evaluating whether coercion was used, NMU will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.

Resources - On and Off-Campus

The following resources are available to assist Parties in relationship violence, sexual misconduct, and/or stalking matters as well as to friends and family members who want to report relationship violence, sexual misconduct, and/or stalking.

On-Campus Resources

NMU Police Department (Open 24 hours a day)

(906) 227-2151

Emergency: 911

100 Services Building

Title IX Coordinator

(906) 227-2420

105 Cohodas Hall

Dean of Students Office (DSO)

(906)-227-1700

2001 Hedgcock

Counseling and Consultation Services

(906) 227-2980

3405 Hedgcock

NMU Health Center

(906)-227-2355

Gries Hall-Ground Floor

Housing and Residence Life

(906)-227-2620

3502 Hedgcock

Off-Campus Resources

Women's Center (note: Women's Center provides services to all people of all genders and gender identities)

Emergency Hotline 24/7

(906) 226-6611

(800) 455-6611

General Information

(906) 225-1346

Harbor House

24/7 crisis line

(906) 226-6611

(800) 455-6611

Employee Assistance Program (for NMU Employees)

Call NorthStar to schedule an appointment:

906-225-3145

northsareap.com

UP Health Systems - Marquette

(906) 228-9440

850 W. Baraga Avenue

Marquette, MI 49855

UP Health Systems – Bell (Ishpeming)

(906) 486-4431

901 Lakeshore Drive

Ishpeming, MI 49849

Pathways

(906) 225-1181

(888) 728-4929 24/7 Hotline

200 West Spring Street

Marquette, MI 49855

National Sexual Assault Hotline

<http://www.rainn.org>

1-800-656-4673 (24/7)

Important Information about Medical Care and Preserving Evidence

It is required by law that NMU emphasize the importance of preserving evidence after sexual misconduct and/or relationship violence occurs.

NMU encourages all individuals who experienced sexual misconduct and/or relationship violence to seek immediate assistance from a medical provider for emergency services, including treatment of any injury, and to collect and preserve physical and other forms of evidence.

Seeking medical attention helps preserve the full range of options, including the options of working through NMU's Complaint/Grievance Process and/or filing criminal complaints.

Regardless of whether an incident of relationship violence, sexual misconduct, and/or stalking is reported to the police or NMU, it is important for an individual who has experienced relationship violence, sexual misconduct, and/or stalking to preserve evidence to the greatest extent possible to preserve all legal options. This may include other kinds of evidence, such as text messages, e-mail, social media postings, pictures and video.

Sexual Assault Medical Forensic Examination and Preserving Evidence

NMU encourages victims of relationship violence and/or sexual misconduct to have a medical examination. NMU Police Department may provide transportation to the examination if requested. Even if an individual has not been physically hurt, a timely medical examination is recommended so that forensic evidence can be collected and preserved. An individual may choose to allow the collection of evidence by medical personnel even if they choose not to make a report to the police.

A sexual assault medical forensic examination typically includes a medical history, a physical examination, treatment for injury, and prophylactic treatment for pregnancy or sexually transmitted infections (STIs). In Marquette, sexual assault forensic exams can be coordinated through UP Health Systems - Marquette, [\(906\) 228-9440](tel:9062289440); Women's Center/Harbor House [\(906\) 225-1346](tel:9062251346); Hotline: [\(800\) 455-6611](tel:8004556611); <http://www.wcmqt.org/> or by calling the National Sexual Assault Hotline at [\(800\) 656-4673](tel:8006564673).

In order to best preserve forensic evidence, it is suggested that an individual not shower, bathe, douche, smoke, or change clothes or bedding before seeking medical attention, and that medical attention be sought as soon as possible. If the individual decides to change clothes, they can bring them unwashed to the hospital or medical facility in a paper bag.

In Michigan, sexual assault victims have the right to receive a no-cost medical forensic examination and have evidence collected, even if they do not want to participate in the criminal justice process. Health facilities must offer the examination and evidence collection to any person who states they have been assaulted within the previous 120 hours (5 days). If an individual chooses, forensic evidence is also collected through the use of a sexual assault evidence kit. Sexual assault medical forensic examinations are typically performed by a Sexual Assault Nurse Examiner. Patients cannot be billed for evidence collection and the accompanying medical forensic examination.

Where and to Whom to Report

NMU strongly encourages prompt reporting to NMU of conduct that may violate the Relationship Violence, Sexual Misconduct, and Stalking Policy. Any individual (including a student, employee, visitor, guest, or other third party), not just the Complainant, may make a report. An individual may choose to report to law enforcement, a NMU Campus Reporter and/or Official with Authority (University), to both law enforcement and the University, or to make no report at all. Individuals are encouraged to make reports to the police jurisdiction where the violation occurred. NMU Police Department may provide information of police jurisdictions if needed. Support and resources are available, upon request, regardless of the chosen reporting option.

NMU recognizes that deciding among these options can be difficult and is an intensely personal decision. A Complainant has many options to make a report under the Relationship Violence, Sexual Misconduct, and Stalking Policy, including seeking counseling or assistance from a confidential resource and/or making a report to law enforcement.

To File a University Complaint

Reports of Prohibited Conduct can be made to NMU through a number of Campus Reporters and/or Officials with Authority, including the offices listed below.

If you have a police or medical emergency, call 911.

On Campus

NMU Police Department
100 Services Building
906-227-2151

NMU Equal Opportunity and Title IX Office
105 Cohodas Hall
906-227-2420

NMU Dean of Students Office
2001 Hedgcock
906-227-1700

NMU Housing and Residence Life (including resident directors and resident Advisers)
3502 Hedgcock
906-227-2620

To any Campus Reporter

Campus Reporters include all NMU employees who, as a requirement of this Policy, must immediately report any information they learn about suspected Prohibited Conduct to an Official with Authority (OWA), which are the Title IX Coordinator and Deputy Title IX Coordinator. Failure by a Campus Reporter to timely report suspected Prohibited Conduct may subject them to appropriate discipline, up to and including removal from their position.

A Campus Reporter includes any employee, including student employees, who have a duty to report to an Official with Authority (OWA) Prohibited Conduct covered by NMU Policy.

Campus Reporters are required by NMU Policy to immediately disclose all reported details of the incident (date, time, and location), the names of the Parties involved, and a brief description of the incident to the Title IX Coordinator or Deputy Title IX Coordinator. Campus Reporters will safeguard an individual's privacy and only share information with a small circle of individuals who are directly involved in the resolution of a report under the Relationship Violence, Sexual Misconduct and Dating Violence Policy. This connects a Complainant to information and resources and enables NMU to take appropriate action to eliminate, prevent and address any Prohibited Conduct that may exist.

Official with Authority (OWA) is an employee of NMU explicitly vested with the responsibility to implement corrective measures for Prohibited Conduct on behalf of NMU. The designated Officials with Authority are the Title IX Coordinator and Deputy Title IX Coordinator.

To File a Criminal Complaint

Reports of Prohibited Conduct that may constitute a violation of the criminal laws can also be made to law enforcement; make reports to the police jurisdiction where the violation occurred.

Emergency - 911

NMU Police Department
100 Services Building
Marquette, MI 49855
906-227-2151

Marquette City Police Department
300 W. Baraga Avenue
Marquette, MI 49855
906-228-0400

Marquette County Sheriff
236 W. Baraga Avenue
Marquette, MI 49855
906-228-8435

Nationwide Police Contact Information
policelocator.com

If an individual files a report with the NMU Police Department, that information is shared with the Title IX Coordinator and Deputy Title IX Coordinator. However, action taken through the NMU Police Department and/or NMU are separate. Support and resources are available, regardless of the chosen reporting path.

Formal Complaint

A complaint may be filed with the Title IX Coordinator or Deputy Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed in the Relationship Violence, Sexual Assault and Stalking Policy.

If notice of a complaint is submitted in a form that does not meet the standard of a Formal Complaint, the Title IX Coordinator or Deputy Title IX Coordinator will contact the Complainant to ensure that it is filed correctly. A Formal Complaint means a document filed/signed (physical or digital signature or otherwise indicates that the Complainant is the person filing the complaint) by the Complainant.

The Complainant may initiate a Formal Complaint at any time during or after an initial Report by contacting the Title IX Coordinator and submitting the Complaint in writing. A parent or legal guardian may file a Formal Complaint on behalf of their minor dependent with a disability.

A Formal Complaint may also be signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that NMU investigate the allegation(s). In doing so, the Title IX Coordinator does not become a Complainant or a Party for the case.

Timeframes for Reporting

There is no time limit for reporting Prohibited Conduct, however, all individuals are encouraged to report as soon as possible in order to maximize NMU's ability to respond promptly and effectively. If the Respondent is not a member of the NMU Community at the time of the report, NMU will still provide Supportive Measures to the Complainant; however, its ability to investigate and/or take action may be limited. NMU will assist a Complainant in identifying external reporting options, if/when requested.

If a Complainant chooses not to file a Formal Complaint at the time of the Report, they may file a Formal Complaint at a later date.

If a Complainant decides to withdraw a Formal Complaint, they may later request to reinstate it or refile it.

Complainant Requests for Confidentiality/No Investigation

If a Complainant does not wish for their name or other identifiable information to be shared with the Respondent, does not wish for an investigation to take place, or does not want a Formal Complaint to be pursued, they may make such a request to the Title IX Coordinator or Deputy Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law. NMU will also remain true to principles of fundamental fairness that require notice and an opportunity to respond.

In assessing threats, NMU may consult with appropriate offices, which may include the Campus Assessment Team, and may consider the following in evaluating a Complainant's request for confidentiality, that no investigation occur, or that no formal action be taken:

- the nature and scope of the alleged conduct, including whether the reported Prohibited Conduct involves the use of a weapon;
- the Complainant's wish not to pursue disciplinary action;
- the respective ages and roles of the Complainant and Respondent;
- the risk posed to any individual or to the campus community by not proceeding, including the risk of additional violence;
- whether there have been other reports of misconduct by the Respondent;
- whether the Respondent threatened further sexual violence or other violence against the Complainant or others;
- whether the report reveals a pattern of Prohibited Conduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group such that there is an increased risk of future acts of sexual violence under similar circumstances;
- whether NMU possesses other means to obtain relevant evidence (e.g., security cameras, personnel, or physical evidence);
- considerations of fundamental fairness and due process with respect to the Respondent should the course of action include disciplinary action against the Respondent; and
- NMU's obligation to provide a safe and non-discriminatory environment.

Where NMU determines that action should be taken that is inconsistent with a Complainant's request not to proceed, the Title IX Coordinator, Deputy Title IX Coordinator or their designee will inform the Complainant about NMU's chosen course of action. As part of providing Supportive Measures, NMU may pursue steps to limit the effects of the alleged Prohibited Conduct and prevent its recurrence in ways that do not involve disciplinary action against a Respondent or disclosing the identity of the Complainant. NMU may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a Formal Complaint at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have allegations taken seriously by NMU, and to have the incidents investigated and resolved through these procedures.

Supportive Provisions

Supportive Measures

NMU offers non-disciplinary, non-punitive individualized services as appropriate, as reasonably available, and without fee or charge to the Complainant and/or the Respondent upon notice of alleged Prohibited Conduct. Such measures are designed to restore or preserve equal access to the university's education program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or the university's educational environment, and deter Prohibited Conduct.

Supportive measures may include referral to other departments such as Counseling and Consultation Services or the Health Center, or referral to the Employee Assistance Program, modifications of work, Safe Walk Program, mutual restrictions on contact between the Complainant and Respondent, changes in work or housing locations, work leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The Title IX Coordinator or Deputy Title IX Coordinator may also assist, in coordination with faculty, in other supportive measures that may include adjustment to class schedules, extensions of deadlines or other course-related adjustments, and student leave of absence.

NMU will maintain the privacy of the supportive measures, provided that privacy does not impair NMU's ability to provide the supportive measures. NMU will act to ensure as minimal of an academic impact on the Parties as possible. NMU will implement measures in a way that does not unreasonably burden the other Party.

The Title IX Coordinator and/or Deputy Title IX Coordinator promptly makes supportive measures available to the Complainant and/or Respondent, when appropriate, upon receiving notice of Prohibited Conduct. Supportive measures may be offered as the result of such disclosures without formal NMU action. At the time that supportive measures are offered, NMU will inform the Complainant, in writing (via email), that they may file a Formal Complaint with NMU either at that time or in the future, if they have not done so already. The Title IX Coordinator or Deputy Title IX Coordinator is responsible for coordinating the implementation of supportive measures.

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

While evaluating the need for Supportive Measures, the University may consider whether Emergency Removal of the Respondent is necessary. After conducting an individualized safety and risk analysis, the University may remove a Respondent from a University program or activity on an emergency basis, if it is determined that a Respondent poses an immediate threat to the physical health or safety of any individual arising from the allegations of Prohibited Conduct that justifies removal.

The emergency removal will remain in place pending the results of an investigation or until the threat to health or safety has passed.

If the University institutes an emergency removal (temporary suspension), the Respondent will receive notice and an opportunity to challenge the decision. For students, emergency removal follows the provisions and process set forth in the NMU Student Code of Conduct (see NMU Student Code, Temporary Suspension).

The University may place an employee on Administrative Leave when circumstances suggest the presence of the Respondent would significantly hinder the investigation.

Support Person and/or Adviser

Complainant(s) and Respondent(s) may each have a support person and/or Adviser of their choice present at any meeting related to a report of Prohibited Conduct.

During investigative meetings, the Adviser and/or Support Person are both silent and non-participating entities who are there solely to observe and provide support. The Parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Either Party or their Adviser and/or Support Person may request a short break during the investigative meetings to confer privately.

If the case proceeds to a hearing, the Adviser is then responsible for asking cross examination questions on behalf of their Party. The Adviser cannot make opening or closing statements, object to questions, ask questions of their own, or engage in advocacy other than to ask questions on behalf of their Party. An Adviser is required at a hearing; if a Party does not have an Adviser at the hearing, the University will provide one at no charge.

An Adviser may be an attorney. Advisers should make themselves available for meetings throughout the process when requested by their Party to attend. NMU will communicate directly with the Party. If the Party requests communication directly with the adviser, the determination will be made at the discretion of the Title IX Coordinator.

The Adviser and/or Support Person will be required to abide by the University's policies and procedures, privacy protections and expected rules of participation. Neither the Adviser nor the Support Person may be a fact witness or otherwise have any conflicting role in the Complaint/Grievance Process. The University shall determine what constitutes appropriate behavior on the part of a support person and Adviser.

Any Adviser who oversteps their role as defined will be warned. If the Adviser continues to disrupt or otherwise fails to respect the limits of the Adviser role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator or designee will determine how to address the Adviser's non-compliance and future role.

Advisers are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by NMU. NMU may seek to restrict the role of any Adviser who does not respect the sensitive nature of the process or who fails to abide by NMU's privacy expectations.

NMU may also make reasonable provisions to allow an Adviser who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

The Parties are expected to provide immediate notice to the Title IX Coordinator or designee if they change Advisers at any time.

Complaint/Grievance Process

When responding to a Report of Prohibited Conduct, NMU will undertake a Complaint/Grievance Process. The Complaint/Grievance Process will include; assessment (including Supportive Measures or emergency removal); formal resolution (investigation, hearing (for Complaint/Grievance Process A only), finding, appeal of outcome, sanction, appeal of sanction).

The Complaint/Grievance Process will ensure the following basic rights for all participants:

- Equitable treatment of all Parties
- Supportive Measures offered to both Parties
- Objective evaluation of evidence

- No NMU conflicts of interest or bias by investigations or any Decision Makers involved in the process.
- Presumption of “not responsible” for Respondent
- Reasonably prompt timeframes for all steps in the process, including disciplinary sanctions
- Preponderance of Evidence standard used in all cases
- Appeal provided to both Parties

NMU will support and assist any Complainant or Respondent in understanding how to navigate the Grievance Process and Procedures. Upon receipt of a Formal Complaint, NMU will conduct a Title IX Assessment to determine the applicable process for review and investigation.

Complaint/Grievance Process A applies to qualifying allegations of both Title IX involving employees or students. Complaint/Grievance Process A also applies to any Prohibited Conduct involving students. Complaint/Grievance Process A Procedures (Appendix A).

Complaint/Grievance Process B applies to employees of the University with qualifying allegations of only non-Title IX Prohibited Conduct. Complaint/Grievance Process B Procedures (Appendix B).

Unionized/other categorized employees are subject to the terms of their agreements/employees' rights to the extent those agreements do not conflict with federal or state compliance obligations.

All efforts will be made to complete the Complaint/Grievance Process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness. Complainants and Respondents will be provided periodic status updates on the progress of the investigation and resolution of all Formal Complaints and subsequent appeals.

NMU will determine responsibility for violation of this Policy by using the preponderance of evidence standard.

Where the Respondent is a third party, defined as any Party who is not a current NMU employee. NMU's ability to take action may be limited. Third Parties (Appendix C).

TITLE IX and Prohibited Conduct

Title IX

Title IX defines Sexual Harassment as conduct on the basis of sex that satisfies one or more of the following: (1) An employee of NMU conditioning the provision of an aid, benefit, or service of NMU on an individual's participation in unwelcome sexual conduct; (2) 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 NMU's education program or activity; or (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "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).

For Title IX to apply, the incident must be reported while the Parties are all associated with the University (as current students or employees) and must have occurred on property owned or operated by the University, in the United States. Individuals who were subjected to Sexual Harassment that meets this definition and criteria under Title IX, and who believe the University's response was deliberately indifferent and/or failed to meet procedural requirements, have a right to contact the ED Office for Civil Rights (OCR). Additionally, Employees have a right to contact the Equal Employment Opportunity Commission (EEOC) regarding their rights under Title VII. See below, "ADDITIONAL INFORMATION, Contact Information for External Agencies."

Prohibited Conduct

The University's definition of Prohibited Conduct is broader than the behavior covered solely by Title IX. See Glossary of Terms for stalking, relationship violence (domestic violence, dating violence), sexual exploitation, sexual assault, and sexual harassment.

Additional Information

Coordination with Law Enforcement

NMU encourages Complainants and Respondents to pursue their legal rights regarding criminal claims of Prohibited Conduct that may also violate federal or state law. If requested, NMU will connect involved Parties with resources so they may file criminal reports and/or cooperate with law enforcement agencies.

NMU's Relationship Violence, Sexual Misconduct, and Stalking Policy, Procedures, definitions and burden of proof may differ from Michigan or federal criminal law. Neither law enforcement's determination of whether to prosecute a Respondent, nor the outcome of any criminal prosecution, determine whether a violation of this Policy has occurred. Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus.

At the request of law enforcement, NMU may defer its Complaint/Grievance Process until after the initial stages of a criminal investigation. If NMU delays for this reason, it will communicate with both Parties regarding Supportive Measures, rights, and procedural options under this Policy to assure safety and well-being during the criminal investigation. NMU will promptly resume the Complaint/Grievance Process under this Policy as soon as it is informed that law enforcement has completed its initial investigation.

Prevention Education

Northern Michigan University places a high priority on maintaining a safe and secure campus for all students, faculty, staff, and visitors. Members of the NMU community learn about campus security procedures and the prevention of crime through mandatory and optional training modules as well as programs presented across NMU.

New employees and students are provided with the opportunity for relationship violence, sexual misconduct, and/or stalking prevention and awareness information. NMU also uses internal and external resources to educate students and employees about harassment, sexual misconduct, relationship violence, safe and positive options for bystander intervention, as well as alcohol and drug awareness.

In addition, NMU offices, such as the NMU Police Department, Intercollegiate Athletics and Recreational Services, and Housing and Residence Life, coordinate to offer programming to address important topics such as relationship violence, sexual misconduct, bystander intervention, and substance abuse awareness education.

In addition, NMU follows all federal and state training requirements for all sexual misconduct, relationship violence and/or stalking for reporting, investigations, resolutions, and appeals.

Training Requirements

Every person involved in the resolution of a Formal Complaint of Prohibited Conduct must complete all legally required training. These individuals include the Director of Equal Opportunity/Title IX Coordinator and their designees, Deputy Title IX Coordinator, Investigators, Decision Maker, Appeal Committee Members, Conduct Administrators (designated Dean of Student staff, designated Human Resources staff, and the Provost for Academic Affairs and their designee), and designated NMU

Police Department staff and Campus Reporters. The Title IX Office will post all training material on a University web page so it is accessible to the public.

Contact Information for External Complaints and Other Resources

Concerns about NMU's application of Title IX, Title VII, the Clery Act, or Michigan's Elliott-Larsen Civil Rights Act or any other applicable federal or state law may be addressed to the Title IX Coordinator at titleix@nmu.edu or [906-227-2420](tel:906-227-2420); Clery Officer at cleryofficer@nmu.edu or [906-227-2150](tel:906-227-2150); or any of these external agencies:

United State Department of Education Clery Act Compliance Division

clery@ed.gov

(800) 421-3481)

United States Department of Education Office for Civil Rights

400 Maryland Avenue, SW

Washington, D.C. [202-202-1100](tel:202-202-1100)

Customer Service Hotline #: [\(800\) 421-3481](tel:800-421-3481)

Facsimile: [\(202\) 453-6012](tel:202-453-6012)

TDD#: [\(877\) 521-2172](tel:877-521-2172)

Email: OCR@ed.gov

Equal Employment Opportunity Commission

info@eeoc.gov

(800) 669-4000)

Michigan Department of Civil Rights

www.michigan.gov/

GLOSSARY OF TERMS

Adviser

An individual chosen by a Complainant or Respondent or appointed by NMU. The adviser's role is to advise the Party. The Adviser's role in meetings is to advise their party privately. The Adviser's role in a hearing is limited to cross-examination of the other Party and witnesses only.

Business Day

A day when NMU is open for business.

Campus Reporters

All employees, except those specifically identified below, are designated as Campus Reporters, and must report, by Policy, incidents of Prohibited Conduct observed as well as incidents reported to them. Campus Reporters must report to an Official with Authority (OWA). At Northern, the OWA are the Title IX Coordinator and the Deputy Title IX Coordinator, who are assigned to implement corrective measures for Prohibited Conduct.

At Northern, employees of Counseling and Consultation Services and the NMU Health Center are designated as Confidential Resources. Confidential Resources will not typically be required to make a report to the OWA without the permission of the person reporting; specific exceptions are allowed by law and regulation, including but not limited to the protection of a minor child, protecting persons

at high risk for violence, or to adhere to a court order.

Complainant

An individual who is allegedly subjected to behavior that violates the Relationship Violence, Sexual Misconduct and Stalking Policy.

Consent

Consent is the voluntary, informed, and freely given agreement, through words and/or actions, to participate in mutually agreed-upon sexual acts. Consensual sexual activity happens when each partner willingly and affirmatively chooses to participate in each sexual act.

Dating Violence

Violence, or threat of violence, by a person who has been in a romantic or intimate relationship with the Complainant. Whether there was such a relationship will be gauged by the length, type, and frequency of interaction.

Domestic Violence and Intimate Partner Violence

A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitation with the Complainant shares a child in common, by a person who is cohabitating with or has cohabited with the Complainant as a spouse, by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the applicable jurisdiction, or by any other person against a Complainant who is protected from that person's act under the domestic or family violence laws of the applicable jurisdiction. To constitute Domestic Violence or Intimate Partner Violence under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates.

Decision Maker

A person(s) authorized to determine whether a Respondent has violated the Relationship Violence, Sexual Misconduct and Stalking Policy and to impose sanctions when it has been determined a violation has been committed. This includes specially trained individuals to administer cases related to Prohibited Conduct.

Education Program or Activity

Locations, events, or circumstances where NMU exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by NMU.

Final Determination

A conclusion by preponderance of evidence that the alleged conduct occurred and whether it did or did not violate policy.

Force

Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity.

Formal Complaint

A document signed by a Complainant or signed by the Title IX Coordinator alleging Prohibited Conduct against a Respondent requesting that NMU investigate the allegation. A complaint may be delivered to the Title IX Coordinator in person, by mail, or by electronic mail.

Complaint/Grievance Process

The process that NMU uses to assess a report and resolve a Formal Complaint.

Incapacitation

Incapacitation (Incapacitated) means a person's inability, temporarily or permanently, to communicate a willingness to participate in an activity (e.g., sexual contact or sexual penetration) because of mental or physical helplessness, sleep, unconsciousness, or other lack of awareness that the activity is taking place.

Incapacitation can be voluntary or involuntary. Signs of Incapacitation may include, without limitation: sleep; total or intermittent unconsciousness; lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness; vomiting; incontinence; unresponsiveness; and inability to communicate coherently. Incapacitation is an individualized determination based on the totality of the circumstances. Alcohol and drugs may be causes of Incapacitation.

Investigator

The person or persons charged by NMU with gathering facts about an alleged violation of this Policy and compiling the information into an investigation report and file of directly related evidence.

Sexual Assault

The following behaviors constitute sexual assault:

Non-Consensual Sexual Contact

Any intentional touching of a person's breasts, inner thighs, buttocks, groin, or genitals without consent. Touching may be over or under the clothing and may include the Respondent touching the Complainant or the Respondent making the Complainant touch the Respondent.

Non-Consensual Sexual Penetration

Any vaginal or anal intercourse, cunnilingus, fellatio, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening of another person's body, without consent. Emission of semen is not required.

Notice

An employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of Prohibited Conduct.

Officials with Authority

Officials with Authority are the Title IX Coordinator and the Deputy Title IX Coordinator, who are assigned to implement corrective measures for Prohibited Conduct.

Party(ies)

The Complaint(s) or Respondent(s) in an investigation or action relating to a complaint of Prohibited Conduct.

Prohibited Conduct

Prohibited Conduct is a term used to collectively refer to relationship violence, sexual misconduct (sexual assault, sexual exploitation, and sexual or gender-based harassment), and stalking. Prohibited Conduct can be committed by anyone, regardless of sex or gender, and can occur between people of the same or different gender.

Reasonable Person

Reasonable Person is a hypothetical person in society who exercises average care, skill, and judgment in conduct and who serves as a comparative standard for determining responsibility.

Relationship Violence

Relationship Violence, also referred to as dating violence, domestic violence, or intimate partner violence, is any act (or threatened act) of violence or pattern of abusive behavior that one person uses against a current or former partner in a sexual, dating, spousal, domestic, or intimate relationship, to gain or maintain power and control over another. Relationship violence may include any form of prohibited sexual misconduct under this Policy.

The determination of whether any conduct constitutes relationship violence is whether the conduct is so severe, pervasive or persistent as to significantly interfere with an individual's ability to learn and/or work or cause substantial emotional distress, when judged both objectively (meaning that a "reasonable person" would find the behavior to be emotionally abusive) and subjectively (meaning the impacted individual felt the behavior was emotionally abusive.)

Remedy

Post-finding actions directed to the Complainant, Respondent and/or the community as mechanisms to address safety, prevent recurrence, and restore access to NMU's educational program.

Respondent

An individual who has been reported to be the perpetrator of Prohibited Conduct that could constitute a violation of the Relationship Violence, Sexual Misconduct and Stalking Policy.

Retaliation

It is a violation of the University's Retaliation Policy to intimidate, discipline, discharge, or harass any individual who has in good faith reported misconduct or fraud, filed a complaint, instituted proceedings, assisted in an investigation or compliance review, or formally or informally objected to sexual misconduct and/or discriminatory practices.

Sanction

Consequence(s) imposed by NMU on a Respondent who is found to have violated this Policy.

Sexual Coercion

Sexual coercion is the use of an unreasonable amount of pressure to gain access to sexual acts. Sexual coercion is more than an effort to invite, entice, or attract another person to have sex. When a person does not consent to a particular form of sexual contact, sexual interaction, or sexual intercourse, continued pressure can be coercive.

Sexual Exploitation

Sexual exploitation is any act where one person takes sexual advantage without consent of another

person but does not involve actual or attempted physical contact.

Sexual exploitation may include but is not limited to:

- Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all Parties involved in a place where an individual would have a reasonable expectation of privacy, ;
- Recording, photographing, transmitting, showing, viewing, streaming, sharing or distributing intimate or sexual images, audio recordings, or sexual information without the knowledge and consent of all Parties involved, or threatening to do so; or
- Recording or photographing private sexual activity and/or a person's intimate parts without the consent of all subjects or participants;
- Exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances.
- Prostituting another person.
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), or a sexually-transmitted disease (STD), or infection (STI), without informing the other person of the infection.
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity.
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity.

Sexual or Gender-Based Harassment

Any unwelcome sexual advance, requests for sexual favors, or other unwelcome conduct of a sexual nature, whether verbal, non-verbal, graphic, or physical, when the conditions are outlined in (1), (2), or (3), below, are present.

Gender-based harassment is harassment based on gender, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, non-verbal, graphic, or physical, even if the acts do not involve conduct of a sexual nature, when the conditions outlined in (1), (2), or (3), below, are present.

1. Submission to, or rejection of, such conduct is made, either explicitly or implicitly, a term or condition of an individual's instruction, academic standing, employment, or participation in any University program, activity, or benefit, or activity (e.g. *quid pro quo*).
2. Submission to, or rejection of, such conduct by an individual is used as the basis for evaluation in making academic or personnel decisions. (e.g. *quid pro quo*)
3. Such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently serious, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University's educational, employment, and/or campus-residential experience when viewed through a subjective and objective standard.

Whether sexual harassment is sufficiently severe, persistent or pervasive to violate this Policy may depend on multiple factors. In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances. Not all inappropriate or unwanted sexual conduct is sexual harassment. Whether the unwanted sexual conduct rises to the level of creating a hostile environment will be determined using both a subjective and objective standard. However, the person

should not be discouraged from reporting unwelcomed sexual conduct simply because they are not certain whether it is severe, persistent or pervasive, or objectively offensive enough to constitute a policy violation.

Examples of Sexual Harassment

Some examples of prohibited sexual harassment include:

- Deliberate touching which does not contribute to or advance the work, service, or educational activity being conducted.
- Repeated brushing against or touching of another's body, which does not contribute to or advance the work, service, or educational activity being conducted.
- Pressure or demands for a date or for sexual activity with a subordinate by an individual in authority.
- Repeated requests for a date or for sexual activity.
- Written/electronic, verbal, pictorial, nonverbal, or actual displays of obscenity which do not contribute to or advance the work, service, or education activity being conducted.

Stalking

Stalking is a course of conduct (i.e., two or more acts) directed at a specific person which would cause a reasonable person under similar circumstances to experience substantial emotional distress, or to fear for their safety or the safety of a third person. Acts that together constitute stalking may be direct actions or may be communicated by a third party, and can include, but are not limited to, threats of harm to self, others, or property; pursuing or following; non-consensual (unwanted) communications by any means; unwanted gifts; trespassing; and surveillance or other related types of observation. Stalking also includes cyber-stalking through electronic media, like the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.

Supportive Measures

Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant and/or the Respondent upon notice of alleged relationship violence, sexual assault or stalking. Such measures are designed to restore or preserve equal access to the university's education program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or the university's educational environment, and deter sexual harassment.

Supportive measures may include counseling, modifications of work, Safe Work Program, mutual restrictions on contact between the Parties, changes in work or housing locations, work leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The Title IX Coordinator and/or Deputy Title IX Coordinator may also assist, in coordination with faculty, in other supportive measures that may include adjustment to class schedules, extensions of deadlines or other course-related adjustments, and student leave of absence.

The institution must maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Procedures were approved by President Erickson on 8/14/2020.

ATIXA 2020 ONE POLICY, TWO PROCEDURES MODEL
USE AND ADAPTATION OF THIS MODEL WITH CITATION TO ATIXA IS PERMITTED
THROUGH A LIMITED LICENSE
TO NORTHERN MICHIGAN UNIVERSITY.
ALL OTHER RIGHTS RESERVED.
©2020. ATIXA

Northern Michigan University
NMU Board of Trustees (/board)

1401 Presque Isle Ave. • Marquette, MI 49855-5301 • 906-227-1000

© 2021 by the NMU Board of Trustees (/board). NMU is an equal opportunity institution (/equalop).