

# **Rochester University Sexual and Gender-Based Harassment and Interpersonal Violence Policy**

Update 01/05/2021

## **I. INTRODUCTION**

Members of the University community, guests and visitors have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The University believes in zero tolerance for sex/gender-based misconduct. Zero tolerance means that when an allegation of misconduct is brought to an appropriate administrator's attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including serious sanctions when a responding party is found to have violated this policy. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

As a recipient of federal funding, the University is required to comply with Title IX of the Higher Education Amendments of 1972, 10 U.S.C. § 1681 et seq. (Title IX). Title IX is a federal civil rights law that prohibits discrimination on the basis of sex — including pregnancy discrimination and Sexual Harassment — in educational programs and activities. Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.

Sexual Harassment is defined broadly under this Sexual Harassment Policy (Policy). Sexual Harassment includes Sexual Assault, Sexual Harassment, Non-Consensual Sexual Contact, Non-Consensual Sexual Intercourse, Sexual Exploitation, Sexual Misconduct with a Minor, Child Molesting, and sex discrimination, as defined below. Sexual Harassment is a violation of University policy, state and federal civil rights laws, and may violate state and federal criminal laws. When an allegation of Sexual Harassment is brought to an appropriate individual's attention, and a Respondent is found to have violated this policy, the University will issue appropriate sanctions to prevent future misconduct.

The University's sex/gender harassment, discrimination and misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom. Academic freedom extends to topics that are pedagogically appropriate and germane to the subject matter of courses or that touch on academic exploration of matters of public concern.

The University uses the preponderance of the evidence (also known as "more likely than not") as a standard for proof in determining whether a violation occurred. The University never assumes a responding party is in violation of University policy; however traditional legal terminology (i.e. guilt, innocence and burden of proof) is not applicable to University resolution proceedings. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

## **TITLE IX COORDINATOR**

The University's Title IX Coordinator oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct policy. The Coordinator reports directly to the President of the University regarding the University's Title IX policy and its enforcement. Questions about this policy should be

directed to the Title IX Coordinator. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the University Title IX Coordinator:

Dr. Sharia Hays  
Dean of Students and Title IX Coordinator  
The Center for Student Life  
248.218.2040  
[shays@rochesteru.edu](mailto:shays@rochesteru.edu)

Additionally, anonymous reports may be made by victims and/or third parties using the online reporting form posted on the University's Title IX website. Note that any anonymous report may result in an investigation by the University.

Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:

**Office for Civil Rights (OCR)**  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
Phone: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

**Michigan Department of Civil Rights (MDCR)**  
Grand Rapids Office  
State Office Building, 4th Floor  
350 Ottawa, N.W.  
Grand Rapids, MI 49503  
Phone: (616) 356-0380  
Fax: 616-356-0399  
Web: <https://www.michigan.gov/mdcr/>

In the event that an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to the Vice President responsible for oversight of the Center for Student Life.

## DEFINITIONS

The following terms and definitions apply to this Policy.

| Term             | Definition   |
|------------------|--|
| <b>Appointee</b> | An individual deemed to have an affiliation with the university in a non-compensatory capacity as designated in the applicable Human Resources Information System. |

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| <b>Advisor</b>     | A person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.   |
| <b>Complainant</b> | Any person who is reported to have experienced conduct prohibited by this policy, regardless of whether that individual makes a report or participates in the review of that report by the university, and regardless of whether that person is a member of the University Community.  |
| <b>Consent</b>     | <p>Permission that is clear, knowing, voluntary, and expressed prior to engaging in and during an act. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as Consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.</p> <ul style="list-style-type: none"> <li>A. Consent to any one form of sexual activity cannot automatically imply Consent to any other forms of sexual activity.</li> <li>B. Consent may be withdrawn at any time.</li> <li>C. Previous relationships or prior Consent cannot imply Consent to future sexual acts; this includes “blanket” Consent (i.e., permission in advance for any/all actions at a later time/place).</li> <li>D. Consent cannot be given by an individual who one knows to be – or based on the circumstances should reasonably have known to be – substantially impaired (e.g., by alcohol or other drug use, unconsciousness, etc.). <ul style="list-style-type: none"> <li>i. Substantial impairment is a state when an individual cannot make rational, reasonable decisions because they lack the capacity to give knowing Consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).</li> <li>ii. This also covers individuals whose substantial impairment results from other physical or mental conditions including mental disability, sleep, involuntary physical restraint, or from the consumption of alcohol or other drugs.</li> <li>iii. Being impaired by alcohol or other drugs will never function as a defense for any behavior that violates this policy.</li> </ul> </li> <li>E. It is the obligation of the person initiating the sexual activity to obtain Consent.</li> <li>F. An individual cannot Consent who has been coerced, including being compelled by force, threat of force, or deception; who is unaware that the act is being committed; or who is coerced by a supervisory or disciplinary authority. <ul style="list-style-type: none"> <li>i. Force: violence, compulsion, or constraint; physically exerted by any means upon or against a person.</li> </ul> </li> </ul> |

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|                         | <p>ii. Coercion: the application of pressure by the Respondent that unreasonably interferes with the Complainant's ability to exercise free will. Factors to be considered include, but are not limited to, the intensity and duration of the conduct.</p> <p>G. A person who does not want to Consent to sex is not required to resist or verbally object.</p> <p>H. Withdrawal of Consent can be manifested through conduct and need not be a verbal withdrawal of Consent (i.e. crying, pulling away, pushing away, not actively participating, laying there, uncomfortable or upset facial expression).</p> <p>I. Consent may not be given by an individual who has not reached the legal age of Consent under applicable law.</p>  |
| <b>Decision Maker</b>   | The administrator(s) who oversee(s) any hearing or appeal which takes place as part of the formal resolution process.   |
| <b>Formal Complaint</b> | A complaint filed by the Complainant or the University that triggers the University's full investigation and hearing process under Title IX.  |
| <b>Investigator</b>     | An individual assigned by the Title IX Coordinator to investigate the alleged Sexual Harassment and oversee the investigative hearing.  |
| <b>Respondent</b>       | Any member of the University Community who is reported to have engaged in conduct prohibited by this policy.  |
| <b>Student</b>          | <p>An individual to whom an offer of admission has been extended, paid an acceptance fee, registered for classes, or otherwise entered into another agreement with the university to take instruction. Student status lasts until an individual graduates, is permanently dismissed, or is not in attendance for two complete, consecutive terms, and includes those with a continuing educational relationship with the university; "Student" also includes registered Student organizations. A Student organization remains a "Student" for purposes of this policy for one calendar year following the expiration of the organization's most recent registration.</p> <p>The university reserves the right to administer this policy and proceed with any process provided by this policy even if the Student withdraws from the university, is no longer enrolled in classes, or subsequently fails to meet the definition of a Student while a disciplinary matter is pending.</p> |

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| <b>Third Party</b>          | An individual who is not a University student, faculty member, or staff member (e.g., vendors, alumni/ae, or visitors)   |
| <b>Title IX Coordinator</b> | The designated university official with primary responsibility for coordinating the university's compliance with Title IX. This individual provides leadership for Title IX activities; offers consultation, education, and training; and helps to ensure that the university responds appropriately, effectively, and equitably to all Title IX issues. |
| <b>University Community</b> | Faculty, staff, Students, student employees, volunteers, suppliers/contractors, and visitors.  |
| <b>Witness</b>              | An individual who may have information relevant to a report of prohibited conduct. A witness may be a student, an employee, or a third party.  |

## SCOPE OF THIS POLICY

This policy governs the conduct of Rochester University students, regardless of enrollment status; faculty; staff; and third parties (i.e., such as vendors, alumni/ae, and visitors).

Third parties are protected by and subject to this policy. A third party may report potential policy violations committed by a member of the university community. The University will take appropriate steps to investigate and respond to the conduct in a manner that is consistent with the authority granted by the University's jurisdiction over the respondent. A third party who is accused of violating University policy may also be permanently barred from the University or subject to other restrictions for failing to comply with this policy.

This policy applies to conduct that occurs:

- This policy applies to alleged Sexual Harassment that takes place in a University's educational program or activity, against a person in the United States. This includes locations, events, or circumstances over which the University exercised significant control over both the Respondent and the context in which the Sexual Harassment occurred.
- This policy also applies to alleged Sexual Harassment that occurs off-campus, including virtual spaces, in any building owned or controlled by a Student Organization that is officially recognized by the University.
- In situations not covered above, but where the Sexual Harassment undermines the security of the University Community or the integrity of the educational process or poses a serious threat to self or others, other applicable University procedures for general misconduct may be applied.

For every report, the Title IX Coordinator will review the circumstances of the reported conduct to determine whether the University has jurisdiction or disciplinary authority over the respondent or the conduct. In exercising jurisdiction over a Rochester University student whose reported conduct occurred off campus, with no nexus to the University or a University related or sponsored education program or activity, the University's ability to investigate and impose disciplinary action may be limited by the amount of information available to the University through the exercise of reasonable diligence.

In instances where the University no longer has disciplinary authority over the respondent, the University will still take reasonably available steps to support a complainant through interim remedial measures and will assist a complainant in identifying external reporting mechanisms.

Allegations of misconduct that do not fall within the University's Title IX jurisdiction, may still be subject to the processes contained in the University's Code of Student Conduct or Employee Handbook.

## **PRIVACY AND CONFIDENTIALITY**

Rochester University is committed to facilitating an environment that encourages members of the campus community to report any form of sexual and gender-based harassment and/or other forms of interpersonal violence. The university will endeavor to protect the identities and privacy of those who seek help or who report prohibited conduct under this policy. However, it is important to understand the limits on confidentiality of individuals who may be contacted for such assistance. Different people, depending on their positions, have different obligations with regard to confidentiality. Members of the campus community can expect confidentiality from the Campus Psychology Clinic and Campus Ministry staff. See the reporting procedures below for more information regarding confidential communication and responsible parties.

This policy uses the terms privacy and confidentiality as follows:

- The term **privacy** refers to the discretion that will be exercised by the University in the course of any investigation or disciplinary processes under this policy. Information related to a report of prohibited conduct will be shared with a limited circle of University employees who need to know in order to assist in the assessment, investigation, and resolution of the reported and related issues. University employees receive training in how to safeguard private information. The University will make reasonable efforts to investigate and address reports of prohibited conduct under this policy, and information may be disclosed to participants in an investigation as necessary to facilitate the thoroughness and integrity of the investigation. In all such proceedings, the University will take into consideration the privacy of the parties to the extent reasonably possible.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA). The privacy of an individual's medical and related records generally is protected by the Health Insurance Portability and Accountability Act (HIPAA).

- The term **confidentiality** refers to the protections provided to information disclosed in legally-protected or privileged relationships under Michigan state law, including licensed professional mental health counselors, licensed medical professionals, and ordained clergy. These confidential resources can engage in confidential communications under Michigan law when the information is disclosed within the scope of the provision of professional services. When an individual shares information with a confidential resource (on campus or in the community) as a confidential communication in the course of a protected relationship, the confidential resource cannot disclose the information (including information about whether an individual has received services) to any third party without the individual's written permission or unless required by ethical or legal obligations which compel the professional to reveal such information. For example, information may be disclosed when the individual gives written consent for its disclosure, there is an imminent concern that the individual will likely cause serious physical harm to self or others, or the information concerns conduct involving suspected abuse or neglect of a minor under the age of 16. A person's medical and counseling records are privileged and confidential documents. Confidential resources submit non-personally-identifying information

about Clery-reportable crimes to the Rochester University Campus Safety Director for purposes of the anonymous statistical reporting under the Clery Act.

## **AMNESTY POLICY**

**Students:** It is assumed that every student enrolling at Rochester University agrees to conduct himself or herself in a manner conducive to the highest sort of mental and moral development in keeping with the ideals and traditions of the University as outlined in the Rochester University Student Code of Conduct. Rochester University has a primary objective to promote the reporting of instances of sexual and gender-based harassment and/or interpersonal violence so those affected can receive the support and resources needed. Reports of prohibited conduct under this policy, made in good faith by complainants who may have violated the Rochester University Student Code of Conduct at the time of the sexual and gender-based harassment and/or interpersonal violence incident, are granted amnesty from disciplinary actions under the Rochester University Student Code of Conduct.

**Employees:** Sometimes, employees are hesitant to report harassment or discrimination they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to Rochester University officials.

Rochester University may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

## **II. PROHIBITED CONDUCT UNDER THIS POLICY**

In determining whether reported conduct violates this policy, the University will consider the totality of the facts and circumstances involved in the incident, including the nature of the reported conduct and the context in which it occurred. Individuals of any sex or gender can commit any of the prohibited conduct defined in this policy, and it can occur between individuals of the same sex/gender or different sexes/genders. It can occur between strangers or acquaintances, as well as persons involved in intimate, sexual, dating, domestic, or familial relationships.

This policy prohibits the following forms of conduct, including attempts to commit the prohibited conduct outlined below:

### **A. Sexual Harassment**

Rochester University and the State of Michigan regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Rochester University has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

1. Anyone on Rochester University's campus who conditions the provision of aid, benefit, or service 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 Rochester University's education program or activity; or
3. Sexual assault, dating violence, domestic violence or stalking as defined below.

**B. Sexual Assault:** Sexual Assault is defined as any sexual act directed against another person, without consent, including instances where the person(s) is incapable of giving consent. This behavior includes:

1. Non-Consensual Sexual Intercourse Defined as:
  - any sexual penetration or intercourse (anal, oral, or vaginal),
  - however slight,
  - with any object,
  - by a person upon another person,
  - that is without consent and/or by force.

Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.

2. Non-Consensual Sexual Contact Defined as:
  - any intentional sexual touching,
  - however slight,
  - with any object,
  - by a person upon another person,
  - that is without consent and/or by force.

Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

**C. Intimate Partner Violence:** Intimate Partner Violence is defined as acts of physical or emotional violence between individuals involved in an intimate or sexual relationship. This includes acts of domestic violence or dating violence as defined below:

1. Domestic Violence includes violence committed by
  - a current or former spouse or intimate partner of the victim,
  - by a person with whom the victim shares a child in common,
  - by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
  - by a person similarly situated to a spouse of the victim, or
  - any other case as defined by Michigan state law
2. Dating Violence includes violence committed by
  - a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - a. The length of the relationship
    - b. The type of relationship
    - c. The frequency of interaction between persons involved in the relationship

**D. Stalking:** Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to feel fear for their safety or the safety of others; or suffer substantial emotional distress.

## **INCAPACITATION**

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party.

Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from the taking of incapacitating drugs.

In the State of Michigan, a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old may be a crime, and a potential violation of this policy, even if the minor wanted to engage in the act.

## **COERCION OR FORCE**

*Coercion or force* includes conduct, intimidation, and expressed or implied threats of physical or emotional harm, that would reasonably place an individual in fear of immediate or future harm and that is exercised to persuade or compel someone to engage in *Sexual Contact*.

Examples of *Coercion or Force* include causing the deliberate *Incapacitation* of another person; conditioning an academic benefit or employment advantage on submission to the *Sexual Contact*; threatening to harm oneself if the other party does not engage in *Sexual Contact*; or threatening to disclose an individual's *Sexual Orientation, Gender Identity, Gender Expression*, or other personal sensitive information if the other party does not engage in the *Sexual Contact*.

## **RETALIATION**

This policy prohibits acts or words taken against an individual or group of individuals involved in a protected activity. Protected activity includes making a good faith report under this policy; filing an external complaint; opposing in a reasonable manner and consistent with University policy an action reasonably believed to constitute a violation of this policy. Retaliation may also include acts or words taken against an individual or group of individuals because they have participated in proceedings under this policy. Retaliation can take many forms, including, but not limited to, adverse action or violence, threats, and intimidation that would discourage a reasonable person (under similar circumstances and with similar identities to the complainant) from engaging in protected activity. Actions in response to a good faith report or response under this policy are considered retaliatory if they have a materially adverse effect on the working, academic, or University-controlled living environment of an individual or if they hinder or prevent the individual from effectively carrying out their University responsibilities. All individuals and groups of individuals are prohibited from engaging in retaliation and will be held accountable under this policy. Concerns or questions about retaliation should be immediately reported to the University's Title IX Coordinator.

## COMPLICITY

Any act that knowingly aids, facilitates, promotes, or encourages the commission of prohibited conduct by another person.

### III. OPTIONS FOR REPORTING PROHIBITED CONDUCT

Rochester University is committed to facilitating an environment that encourages individuals who have experienced sexual or gender-based harassment or discrimination, including sexual violence, to report the misconduct to the University or to local law enforcement. The University will take precautions to protect the identities and privacy of those who seek help or who report sexual or gender-based harassment or discrimination. These options are not mutually exclusive – an individual choosing to file a report does not need to choose one option over the other. Internal reports and criminal reports can be made simultaneously or at different times. There is no time limitation on reporting allegations to the Title IX Coordinator. However, if the responding Party is no longer subject to Rochester University’s jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited.

The University encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual violence. This is the best course of action to ensure preservation of evidence and to begin a timely investigation, outside of the University’s process.

#### 1. Reporting to Law Enforcement

Conduct that violates this policy may also constitute a violation of law. For immediate safety assistance, an individual should dial 911 or contact Rochester University Campus Security. Campus Security can assist in making a criminal report to local law enforcement. The contact information for the appropriate local law enforcement agencies is listed below. Additionally, Campus Security can provide information about the process for seeking court ordered civil restraining orders or harassment protection orders.

|                                      |              |
|--------------------------------------|--------------|
| Emergencies                          | 911          |
| Rochester University Campus Security | 248.765.8013 |
| Oakland County Sheriff’s Department  | 248.537.3513 |

#### 2. Reporting to the University

The following individuals are trained and designated to receive and respond to allegations of violations of the policy:

Title IX Coordinator:

Dr. Sharia Hays  
Deans of Students and Title IX Coordinator  
The Center for Student Life  
248.218.2040  
shays@rochesteru.edu

Deputy Title IX Coordinator(s):

Scott Cagnet  
Assistant Dean of Students  
The Center for Student Life  
248.218.2231  
[scagnet@rochesteru.edu](mailto:scagnet@rochesteru.edu)

Ginny May  
Director of Human Resources  
Executive Offices  
248.218.2018  
[gmay@rochesteru.edu](mailto:gmay@rochesteru.edu)

Acts of misconduct can be reported using the reporting form at [RU Title IX website](#)

An individual may choose not to provide all of the necessary information relevant to the case. However, the University still has an obligation to investigate the incident in order to provide a safe, non-discriminatory environment for all students, faculty and staff. In deciding whether a complaint must be pursued, the Title IX Coordinator will handle all matters with the assistance of Deputy Title IX Coordinators.

## **RESPONSIBILITY TO REPORT**

It is important to know members of the campus community, including faculty, staff, administrators, and student employees, who have direct responsibility for student welfare, are required to inform the Title IX Coordinator about any report of sexual and gender based harassment and interpersonal violence they receive or instances of which they become aware. Students and all other members of the campus community who do not have direct responsibility for student welfare may report any instance of sexual misconduct for which they have knowledge.

It is important to understand the different responsibilities of Rochester University employees. Every employee is designated as either a Confidential Resource or a Responsible Employee.

**Confidential Resource:** A Confidential Resource is any employee who is a licensed medical, clinical, or mental-health professional (e.g., physicians, nurses, physician's assistants, psychologists, psychiatrists, professional counselors, and social workers, and those performing services under their supervision), when acting in that professional role in the provision of services to a patient; and any employee providing administrative, operational, and/or related support for such health care providers in their performance of such services. Confidential Resources will not disclose information about prohibited conduct without the individual's permission or as set forth in the Confidentiality section. When individuals who otherwise may be Confidential Resources receive information outside of the provision of services to a patient or as part of pastoral care, the Confidential Resource is required to share that information with the Title IX Coordinator.

**Responsible Employees:** With the exception of University employees designated as Confidential resources, all other University employees, including faculty, instructors (including teaching assistants and teachers of record), and staff, **are required to report immediately** any information they know about suspected prohibited conduct or potential violations of this policy. These individuals are referred to as Responsible Employees. Student-workers who have supervisory responsibility or responsibility for the welfare of other students are also considered Responsible Employees when they learn of potential violations of this policy in the scope of their employment. Student-workers who are Responsible Employees include but are not limited to Residence Life Community Leaders.

Responsible Employees must report all known information, including the identities of the parties, the date, time and location, and any details about the reported incident to the Title IX Coordinator. The Title IX Coordinator will share all reports with Rochester University Campus Security to ensure a coordinated institutional response. Responsible Employees may provide support and assistance to a complainant, witness, or respondent; but they cannot promise confidentiality or withhold information about prohibited conduct. Failure by a Responsible Employee to report suspected prohibited conduct in a timely manner may subject them to appropriate discipline, including removal from a position or termination of employment.

Responsible Employees are not required to report information disclosed (1) at public awareness events (e.g. public forums) in which students may disclose prohibited conduct; or (2) during an individual's participation as a subject in an Institutional Review Board-approved human subjects research protocol (IRB Research). The University may provide information about Title IX rights and about available University and community resources and support at public awareness events, however, Institutional Review Boards may, in appropriate cases, require researchers to provide such information to all subjects of IRB Research.

**Students:** With the exception of student workers who are designated as Responsible Employees, all other students are encouraged to report any suspected violation of this policy. A complainant may choose not to make a complaint or report in their own case, even if the complainant would otherwise have reporting obligations by virtue of being a faculty member, staff member, or student worker.

#### **IV. INVESTIGATION AND RESOLUTION MEASURES**

##### **A. Initial Assessment**

The Title IX Coordinator or designee reviews all reports of Sexual Harassment under this policy and completes initial assessment of the reported information. The available resolution options will be guided by the availability of information or evidence suggesting that a policy violation may have occurred; the University's obligation to investigate and provide appropriate remedies to eliminate, prevent, and address the effects of the prohibited conduct; and the desire of the Complainant to participate in an investigation or other resolution.

Upon completion of an initial assessment, the Title IX Coordinator or designee will determine the available options for resolution and will communicate the options to the parties

##### **B. Informal Resolution**

Informal resolution may be utilized in some circumstances if the University deems appropriate and both parties agree to it.

##### **C. Investigative Resolution**

The Title IX Coordinator or designee may resolve a report of Sexual Harassment through investigative resolution when the alleged Sexual Harassment, if true, would be prohibited under applicable University policy. In instances when informal resolution is inappropriate, when the party requests, or when the University requires formal investigation, the University will consider the concerns and rights of all parties and provide a prompt, fair, impartial, and equitable process.

#### **V. REMEDIES**

A. When the University makes a finding of a policy violation, it will take steps, whether individual or systemic, to stop the alleged Sexual Harassment, prevent its recurrence, and remedy the discriminatory effects on the Complainant and others, as appropriate.

## B. Corrective Actions/Sanctions

When the Respondent is a Student, potential sanctions include formal reprimand, disciplinary probation, suspension, dismissal, and other appropriate educational sanctions.

When the Respondent is an employee, corrective actions may be taken pursuant to the University's policy. Disciplinary corrective actions include coaching, development plans, reduction in supervisory duties and leadership responsibilities, changes in salary, termination, and other appropriate corrective actions.

Student employees may be subject to corrective action and sanctions under Student and/or employee policies depending on the nature of the case. For instance, a Student employee who is dismissed from the university may also be subject to termination or other corrective actions.

- C. Any corrective actions or sanctions will not take effect until any appeals have been completed.

## D. Interim Supportive Measures

Reasonable and appropriate remedial, protective and interim measures may be put in place by the appropriate University official(s) upon the University receiving a report of a violation of this policy. These measures may be both remedial (designed to address a Complainant's safety and well-being and continued access to educational opportunities) or protective (designed to reduce the risk of harm to an individual or community). These measures, which may be temporary or permanent, may be imposed even when not specifically requested by a Complainant or Respondent at the discretion of the University, as appropriate.

Interim remedial measures may include but are not limited to:

- Referral to counseling services
- Assistance in providing referral resources to obtain a sexual assault forensic examination
- Assistance in arranging rescheduling of exams and assignments and extensions of deadlines
- Academic support
- Assistance in requesting long-term academic accommodations through Rochester University's Accommodation Officer, if the complainant qualifies as an individual with a disability
- Change in the complainant's class schedule, including the ability to transfer course sections or withdraw from a course
- In a matter in which sexual assault has been alleged, allow either a complainant or a respondent to drop a class in which both parties are enrolled in the same section
- Change in the complainant's University work schedule or job assignment
- Change in the complainant's campus housing
- Escort and other safety planning steps
- Imposition of a "no contact directive," an administrative remedy designed to curtail contact and communications between two or more individuals
- Voluntary leave of absence
- Referral to resources which can assist in obtaining a protective order under Michigan law
- Referral to resources which can assist with any financial aid, visa, or immigration concern

Interim remedial measures are available to the complainant regardless of whether the complainant pursues an investigation or seeks formal disciplinary action.

Interim protective measures may include but are not limited to:

- Change in the respondent's class schedule
- Change in the respondent's University work schedule or job assignment
- Change in the respondent's campus housing
- Exclusion from all or part of University housing
- Exclusion from specified activities or areas of campus
- Prohibition from participating in student activities or representing the University in any capacity including but not limited to: participation in a recognized student organization, participation in a collegiate athletic program, participation in a student leadership capacity and participation in university sanctioned activities and events
- Interim suspension

The University reserves the right to take whatever measures it deems necessary in response to an alleged violation of this policy in order to protect the safety or orderly operation of the campus community. Not all violations of this policy will involve the same set of circumstances, so the Title IX Coordinator will use his or her discretion to impose interim measures.

## **VI. FALSE ALLEGATION**

- A. It is a violation of this policy for anyone to make a false allegation of Sexual Harassment in bad faith. Corrective actions or sanctions may be imposed on individuals who in bad faith make false allegations of Sexual Harassment.
- B. The absence of finding a policy violation is not equivalent to finding that the Complainant acted in bad faith.

## **VII. PROCESS ABUSE**

- A. No member of the University Community may:
  1. Obstruct, prohibit, exert improper influence over, or interfere with any individual making a report, participating in a process, or carrying out a responsibility covered by this policy;
  2. Make, in bad faith, materially false statements in or related to a process covered by this policy;
  3. Disrupt or interfere with the orderly conduct of any proceeding conducted under this policy; or
  4. Fail to comply with any directive, sanction, or corrective action issued pursuant to this policy.

## **VIII. TRAINING**

- A. All faculty, staff, student employees, and Students are required to take annual Sexual Harassment training as directed by the university.

## **IX. THE UNIVERSITY'S RESPONSE PROCEDURE**

### **A. Initial Assessment**

1. Upon receiving a report, the Title IX Coordinator will provide information to the Complainant on the availability of supportive measures, the right to file a Formal Complaint, and how to file a Formal Complaint.

2. The Title IX Coordinator or designee will review all reports of Sexual Harassment under this policy for an initial assessment of the reported information. Available resolution options will be guided by the availability of information and evidence suggesting that a policy violation may have occurred; the University's obligation to investigate and provide appropriate remedies to eliminate, prevent, and address the effects of the prohibited conduct; and the availability or desire of the Complainant to participate in an investigation or other resolution.
3. Upon completion of an initial assessment, the Title IX Coordinator or designee will determine the available options for resolution and will communicate these options to all parties.
4. If the Complainant or the University elects to file a Formal Complaint, the Title IX Coordinator will provide written notice to the Respondent within ten days including:
  - a) The allegations that constitute Sexual Harassment and any evidence that supports this;
  - b) That there is a presumption of innocence in their favor;
  - c) That all parties are entitled to an advisor of their choice;
  - d) That all parties can inspect and review evidence; and,
  - e) Information regarding any code of conduct provisions that prohibit false statements made in bad faith.

#### **B. Dismissal of a Complaint**

1. In the event that prior to, or in the course of, an investigation, the University determines that the allegations fail to meet the definition of Sexual Harassment or did not occur while in the United States and under the University's educational program or activity, the investigation and Formal Complaint will be dismissed. Formal Complaints may still be resolved through an informal resolution process as outlined above or according to procedures set forth in the Student Code of Conduct or Employee Handbook.
2. The University reserves the right to dismiss the Formal Complaint and stop the investigation if:
  - a) The Complainant notifies the Title IX Coordinator in writing that they wish to withdraw their Formal Complaint;
  - b) The Respondent is no longer enrolled in or employed by the University; or
  - c) Specific circumstances prevent the school from gathering sufficient evidence to reach a determination about allegations (e.g. lack of participation in the investigative process by parties or witnesses).
3. If the University dismisses the Formal Complaint for any reason, either party may appeal the decision as outlined in this policy's appeals process.

#### **C. Informal Resolution**

1. Informal resolution may be utilized in some circumstances if a Formal Complaint is filed.
2. An informal resolution process is limited as follows:
  - a) Informal resolution is unavailable if the Respondent is an employee of the University.
  - b) Informal resolution may only be used if any and all parties to an investigation agree to it.
3. In all cases, the University will inform the parties of the right to end the informal resolution process at any time. If a party chooses to end the informal resolution process, the University will inform the Complainant of options, including the option to begin the investigative resolution process.

4. The University will provide a facilitator, mediator, or Conduct Official that is free from conflicts of interest and has received special training in order to facilitate the resolution of the Formal Complaint.
5. Informal resolution can take any form that the parties agree upon. The Title IX Coordinator or designee will work with the parties to develop a form of resolution that adequately resolves the needs of the parties. This may include:
  - a) *Facilitated Dialogue*: A structured and facilitated conversation between two or more individuals, including, but not limited to the Complainant and the Respondent, which allows for voices to be heard and perspectives to be shared. Depending on stated interests, participants may work towards the development of a shared agreement.
  - b) *Shuttle Mediation*: An indirect version of the facilitated dialogue.
  - c) *Circle of Accountability*: A facilitated interaction between the Respondent and University faculty and/or staff designed to provide accountability, structured support, and the creation of an educational plan.
6. Depending on the form chosen, it may be possible for a Complainant to maintain anonymity throughout the informal resolution process.
7. As part of the resolution process, additional measures (including, but not limited to educational programming, training, regular meetings with an appropriate University resource, extensions of no contact orders, or counseling sessions) may be agreed upon.

#### **D. Formal Resolution & Hearings**

1. The Title IX Coordinator or designee may resolve a report of Sexual Harassment through its formal resolution process when the alleged Sexual Harassment, if true, would be prohibited under applicable University policy. In instances when informal resolution is inappropriate, when any party requests, or when the University requires formal investigation, the University will consider the concerns and rights of all parties and provide a prompt, fair, impartial, and equitable process.
2. Investigation
  - a) Following the filing of a Formal Complaint, an Investigator will be assigned to the case by the Title IX Coordinator. During the investigation, the Investigator will seek to meet separately with the Complainant, Respondent, and any relevant witnesses who may have information relevant to the incident. The Investigator may also gather or request other relevant information or evidence when available and appropriate. Both the Complainant and Respondent will be asked to identify witnesses and provide other relevant information in a timely manner to facilitate prompt resolution of the case.
  - b) Although both the Complainant and Respondent are advised to participate in the investigation process to enable a fair and equitable resolution to any case, neither the Complainant nor the Respondent is required to participate in the investigation process.
  - c) Formal Complaints of sexual harassment may be consolidated if the allegations arise out of the same events, facts or circumstances.
  - d) During the investigation process, parties have an equitable right to:
    - (1) Receive notice of the allegations before participating in an interview with sufficient time to prepare for meaningful participation;
    - (2) A process with reasonably prompt timeframes, with extensions for good cause, as described in the Procedure section below;

- (3) Present relevant information to the Investigator, including evidence and witnesses;
  - (4) Receive timely and equal access to any relevant information, documentation, and evidence gathered during the investigation;
  - (5) Have an advisor of their choosing, or through appointment by the University, including an attorney, advocate, or other support people who is not a potential witness in the investigation or could otherwise compromise the investigation, who provides support throughout the formal resolution process, including being present for any meetings or hearings; and
  - (6) Investigators who are adequately trained to resolve cases of alleged Sexual Harassment are familiar with applicable policies and procedures, and who do not have a conflict of interest or bias for or against either party.
- e) The University must provide written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings to all parties whose participation is invited or expected with sufficient time for the party to prepare to participate.
  - f) The University will not restrict the ability of a Complainant or Respondent to discuss the allegations under investigation or to gather and present relevant evidence.
  - g) Credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.
  - h) Following the completion of the investigation, the Investigator will complete an investigative report on the allegations contained in the Formal Complaint. Before the report is finalized, the Investigator will send to each party and their advisors an electronic or hard copy of all evidence that is directly related to the allegations. The University must include all evidence directly related to the allegations, even if the investigator does not intend to rely on that evidence in making a determination of responsibility. The parties then have at least ten days to provide a written response, which the Investigator will consider before finalizing the investigative report. The finalized report is then circulated for no less than ten days before a hearing is held.

### 3. Hearings

- a) The Title IX Coordinator will appoint a Chair to preside over the hearing. The Chair may also be appointed to serve as the Decision Maker.
- b) The Title IX Coordinator will appoint a Hearing Board to serve as the Decision Makers for the hearing. All Decision Maker(s) have received special training on how to be impartial and are assigned to cases by the Title IX Coordinator to avoid any bias and present an objective analysis of the evidence. In no case is the Investigator for a given case also the Decision Maker(s).
- c) The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the investigation and hearings.
- d) The Decision Maker(s) will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived it.

- e) Credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.
- f) Hearings are not legal proceedings and do not follow courtroom procedure or the formal rules of evidence. During any hearing, each party must have an advisor present to ask questions of the other party. This advisor does not need to be licensed to practice law and may be a person of the party's choice or, if they do not have an advisor, the University will provide an advisor for them.
- g) Questioning & Cross-Examinations
  - (1) The Decision Maker(s) may question individual parties and witnesses.
  - (2) Complainants and Respondents will have the opportunity to cross-examine the other party or witnesses. Complainants and Respondents may never ask questions directly. All questions must be asked to the other party through the use of that party's advisor. All questions asked must be relevant. Any questions determined not to be relevant by the Decision Maker(s) are not required to be answered.
  - (3) If a party or witness is absent from the live hearing or refuses to answer cross-examination or other questions, the Decision Maker(s) may not rely on any statement of that person in reaching a determination of responsibility. The Decision Maker(s) may not draw an inference about the determination regarding responsibility based solely on a party's or witness' absence from the live hearing or refusal to answer cross-examination or other questions.
- h) If at any point during the hearing, the Decision Maker(s) determines that unresolved issues exist that could be clarified through additional investigation time, the Decision Maker(s) may suspend the hearing and reconvene it in a timely manner that accommodates further investigation.
- i) Hearings may be conducted in person or virtually through the use of technology at the University's discretion. However, if either the Complainant or Respondent asks to be in a separate room, the University must grant this request and provide appropriate technology to allow for simultaneous participation.
- j) All hearings will be memorialized through audio or audiovisual record or transcript of the live hearing. The recording or transcript will be made available for parties to inspect and review following their completion.

#### 4. Resolution

- a) The Decision Maker(s) will communicate their decision to both parties, concurrently. The Decision Maker(s) will communicate the decision in writing and orally as soon as possible after the hearing. In all cases, the Decision Maker(s) will send the parties a final outcome letter within ten days of the conclusion of the hearing.
- b) The Decision Maker(s) must base all conclusions on an examination of all evidence from the investigation and the hearing. Their conclusion is based on the preponderance of evidence standard: If the evidence indicates it is more likely than not that the Respondent committed the alleged act(s), then Respondent will be found responsible for violating the policy.
- c) The Decision Maker(s)'s written decision must include the following information:

- (1) Identification of the allegations potentially constituting Sexual Harassment;
  - (2) A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - (3) Findings of fact supporting the determination;
  - (4) Conclusions regarding the application of the University's code of conduct to the fact;
  - (5) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanction imposed upon the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided; and
  - (6) The procedures and permissible bases for either party to appeal.
- d) If the Respondent is found responsible for violating this policy, the Decision Maker will consult with appropriate individuals in order to determine the corrective actions and/or sanctions to resolve the case. Any such corrective actions and/or sanctions will be outlined in the Decision Maker(s)'s written decision.

#### **E. Appeals Process**

1. If either party disagrees with the Decision Maker(s)'s determination, they may file a written appeal with the Title IX Coordinator within five days of receiving the Decision Maker(s)'s written decision.
2. Appeals may be filed for:
  - a) A perceived procedural irregularity that affected the outcome.
  - b) New evidence is discovered that was not reasonably available at the time of the determination or dismissal.
  - c) A conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the Investigator(s), or decision-maker(s) or the outcome of the matter.
3. The Appeal Decision Maker will examine all evidence in order to determine if the appeal has merit. The Appeal Decision Maker will make an unbiased objective conclusion as to the appeal's merit and issue a written decision describing the result of the appeal and the rationale for the result; and will provide the written decision simultaneously to both parties.

#### **F. Recordkeeping**

The University shall maintain all records relating to Formal Complaints of Sexual Harassment, as well as all training materials used under this Policy, for seven years.

### **X. REVISION**

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. Rochester University reserves the right to update this document as necessary and those updates are enforced immediately upon being posted online. The Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules, etc. The Title IX Coordinator may also vary procedures materially with notice (on the institutional web site, with the appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure.

Procedures in effect at the time of the resolution will apply to the resolution of incidents, regardless of when the incident occurred. Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution unless the parties consent to be bound by the current policy. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.

*This policy stems from model guidance provided by Barnes & Thornburg, LLP*