Michigan State University
Interim Anti-Discrimination Policy Student Disciplinary Hearing Procedures

Background

The University prohibits acts of harassment through its Anti-Discrimination Policy, Sexual Harassment Policy, and General Student Regulations.

All complaints of alleged harassment in violation of the Anti-Discrimination Policy ("ADP") are investigated by, or under the oversight of, the Office for Inclusion and Intercultural Initiatives (I3). If that investigation results in a finding that harassment in violation of the ADP has occurred, I3 will file a complaint with the Department of Student Life, and such complaint will be processed under the student disciplinary code to determine the appropriate sanction. In those cases, I3 will be identified as the complainant and it will be the prerogative of the victim to determine in what, if any, capacity he/she will participate (i.e., co-complainant, witness, or no participation.)

Complaints that have been investigated and subsequently referred to the student judiciary by I3 call for a unique set of procedural considerations. Federal law compels the University to conduct a prompt, thorough, and impartial investigation of complaints of unlawful harassment (including sexual assault). If that investigation results in a finding that the University’s ADP has been violated, the University must take prompt, remedial action to remedy the harassment. Referral to the student judiciary to determine the appropriate sanction is an important part of the University’s obligation to take prompt, remedial action.

Interim Procedures

Given guidance issued by the US Department of Education, Office for Civil Rights regarding the University’s obligations to address unlawful harassment (including sexual assault), the following interim student disciplinary hearing procedures will be followed while a thorough review of the Academic Freedom for Students at Michigan State University ("AFR") and other relevant University policies is conducted in consultation with Academic Governance. Where the interim procedures are silent on an issue, the normal student judicial procedures outlined in the AFR govern. These procedures will apply to all complaints filed after January 27, 2012.

1 References in these procedures to the ADP also encompass the Sexual Harassment Policy, as conduct that violates the Sexual Harassment Policy also violates the ADP.

2 References in these procedures to I3 also encompass the Title IX and ADA Coordinator and the individual Institutional Equity Coordinators who conduct harassment and discrimination investigations under the oversight of the Director of I3.
I. ADP Hearing Board

The University will create an ADP Hearing Board to adjudicate all student judicial cases involving allegations of harassment prohibited under the ADP.

A. Composition

The ADP Hearing Board shall be comprised of three undergraduate students, one graduate student, two faculty members, and two staff members. Members shall be appointed by the Office of the Provost from a list of current members of the Anti-Discrimination Judicial Board and the Student Faculty Hearing Board. If necessary, the Office of the Provost may also appoint members from the student, faculty, and staff ranks to fill vacancies in the event that mid-semester openings occur, members are unable to serve during the summer, or interim members are necessary to meet quorum requirements. Consistent with University policy and applicable law, every reasonable effort will be made to assure diversity on the Board.

B. Terms of Office

Members of the ADP Hearing Board shall serve until the completion of the review of the AFR and other relevant policies by Academic Governance.

C. Hearing Board Jurisdiction

The ADP Hearing Board shall convene to review the findings of I3 and determine the appropriate sanction to be imposed. The Hearing Board shall not disregard the findings of I3 unless the Board determines that the decision was arbitrary and capricious or resulted from procedural error. A finding is arbitrary and capricious when the application of the policy has no reasonable basis in fact. The party alleging that the finding was arbitrary and capricious or resulted from procedural error bears the burden of proof.

II. Hearing and Appeal Procedures

The ADP Hearing Board and the University Student Appeals Board will follow the same administrative, hearing, and appeal procedures outlined in Article 5 of the AFR for the adjudication of non-academic cases, with the following clarifications:

A. The complainant will be provided the same opportunity as the respondent to meet with an administrator after filing the complaint. The administrator will advise the complainant of his/her rights and responsibilities under the AFR. (See Article 5, Section I.D.) If the complainant is I3, the victim(s) may also attend this administrative meeting.

B. The parties (and their advisors) will not be permitted to personally question or cross-examine each other during the hearing. The Hearing Board will continue to be permitted to ask clarifying questions of either party during the hearing.
C. Either party may appeal a decision of the ADP Hearing Board to the University Student Appeals Board on the basis that the applicable procedures were not followed, there was a conflict of interest involving a member of the Hearing Board, or the information presented at the hearing does not support the decision reached by the Hearing Board or the sanction imposed. Appeals must be filed within five class days after the date on which the Hearing Board’s decision was sent to the parties.

D. Either party may appeal a decision of the University Student Appeals Board to the Vice President for Student Affairs and Services on the basis that the applicable procedures were not followed, there was a conflict of interest involving a member of the Appeal Board, or the information presented at the hearing does not support the decision reached by the Appeal Board or the sanction imposed. Appeals must be filed within five class days of the Appeal Board’s decision. The Vice President’s decision is final.

III. Training

Members of the ADP Hearing Board and the University Student Appeals Board will be required to attend training regarding prohibited harassment (including sexual assault under Title IX) and the University’s Anti-Discrimination Policy prior to serving on a hearing panel.

IV. Timeframes

The normal timeframes contained within Article 5 of the AFR apply, with the following clarifications:

A. The ADP Hearing Board will normally convene to hear a case within three weeks after the complaint has been referred for a hearing. This timeframe may be extended during periods when classes are not held (i.e., Spring Break, final examination week, etc.).

B. The ADP Hearing Board will normally render a decision in writing within two weeks after the hearing.

C. The Vice President for Student Affairs will normally issue a decision in writing within two weeks after receiving a written appeal. This timeframe may be extended for good cause, provided that the parties are provided with notice of the extension and the expected date of the decision.

D. Interim measures imposed pending the outcome of the investigation process shall remain in place until a final determination is made under these procedures.