

Proposals to Amend the University of Michigan *Statement of Student Rights and Responsibilities*

**Submitted to Student Relations Advisory Committee (SRAC)
of Senate Advisory Committee on University Affairs (SACUA)**

November 6, 2009

Prepared by Office of Student Conflict Resolution (OSCR) staff members
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Adam DeSantis; and University of Michigan constituents referenced throughout.

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Introduction

Planning for the 2009-2010 *Statement of Student Rights and Responsibilities* Amendment Process began in Fall 2008. In April 2009 the amendment cycle was announced by the VPSA, and OSCR hosted an amendment process luncheon and dialogue for community members. In response to SRAC's request that OSCR oversee a streamlined review process and consensus building prior to proposal submission to SRAC, OSCR invited community members to participate in Community Dialogues in September to discuss, vet, and refine proposed amendments. The proposals being submitted here reflect this consensus building and refinement, and have the thumbprints of many University of Michigan community members. Affiliates of the following University entities were present at one or more of the September 2009 Community Dialogues:

- Michigan Student Assembly Executive Board
- MSA Student Rights Commission
- Dean of Students
- Department of Public Safety
- Center for the Education of Women
- University Students Against Rape
- Graduate and undergraduate students
- Spectrum Center
- University Health Services
- Office of Greek Life
- Alumni Association
- Sexual Assault Prevention and Awareness Center
- International Center
- Interfraternity Council and Panhellenic Association
- Office of Student Conflict Resolution

§1 Updating the Nondiscrimination Policy

Principle

Keeping the *Statement* consistent with current University policies and practices, particularly as the *Statement* states: “Students have the right to ... have access to university policies which affect them.”

Proposed by: E. Royster Harper, Vice President for Student Affairs

Contributing Authors

Linda Hancock Green, Director of Communication & Public Relations, Office of the VPSA

Community Support

Community members who attended the Community Dialogues in September 2009 expressed consent with this proposal.

Rationale

The Regents adopted a revised nondiscrimination policy on April 16, 2009. As the nondiscrimination policy is referenced indirectly in the *Statement*, it needs to be updated to reflect the current policy.

Proposed Amendment

II. Student Rights, p. 5, second paragraph

Students have the right to be treated fairly and with dignity regardless of race, ~~age~~, color, ~~creed~~, ~~disability~~, ~~marital status~~, national origin or ancestry, ~~race~~, religion, age, marital status, sex (including ~~gender identity and gender expression~~), sexual orientation, gender identity, gender expression, disability, religion, height, weight, or veteran status. The University has a long-standing tradition of commitment to pluralistic education. Accordingly, the University, through this Statement, will not discriminate on the basis of group status.

§2 Realignment of *Statement* Language to be Gender Neutral

Principle

Eliminating gendered pronouns to make the *Statement* inclusive of all students.

Proposed by: Michigan Student Assembly

Contributing Authors

Spectrum Center Student Interns, Student Volunteers, and Professional Staff

Community Support

Community members who attended the Community Dialogues in September 2009 expressed consent with this proposal.

Rationale

Justification for the changes

This proposal recommends that the *Statement* be changed to use gender neutral language. This recommendation is based on the fact that not all students identify as either men or women and do not necessarily identify with the gender specific language used in the statement (her, his, he, and she). The *Statement* is intended to be the “Rights and Responsibilities” of all students. Therefore, the language used in the *Statement* should be as inclusive as possible. By changing the use of gendered language in the *Statement*, those students who do not identify with gender-specific pronouns are more fully represented in the *Statement*.

Reasoning for the use of gender neutral “they” and “their”

This proposal recommends changes to the gender-specific pronouns used in various places throughout the *Statement*. In all instances the use of the singular “they” or “their” is recommended as a gender-neutral alternative. Because the English language has no gender neutral pronoun to refer to people, it becomes difficult to write in a way which does not label people as either men or women. Michael Quinion, in *World Wide Words*, makes various suggestions for avoiding “sexist writing.” Quinion’s suggestions include: using the male pronoun as the gender-neutral pronoun, using the female pronoun as the gender-neutral pronoun, alternate male and female pronouns, use both pronouns together, invent a new pronoun, rephrase the sentence to avoid the need for a pronoun, avoid the pronoun by repeating the noun that it replaces, use the plural, and use another pronoun (they/their) instead.¹ Quinion concludes that although none of these solutions are perfect, the best solution in most cases is the use of the singular they/their. Quinion also cites Henry Churchyard’s collection of historical uses of the singular “they/their,” in which Churchyard discusses the use of the singular “their.”²

“Recently, various new constructions or new words have been proposed to mitigate perceived English linguistic sexism; these are innovations, and must be evaluated as such. But singular “their” (etc.) is **not** an innovation, but old established good usage. So

¹ Quinion, M. (1999, September 12). Gender Neutral Pronouns: *World Wide Words*. Retrieved from: <http://www.worldwidewords.org/articles/genpr.htm>.

² See crossmyt.com. (1993). Retrieved October 12, 2009, from, <http://www.crossmyt.com/hc/linghebr/index.html>.

here anti-sexism and traditional English usage go hand-in-hand -- and those who object to singular "their" can find no support from history, linguistics, or the aim of inclusive language."³

The use of the singular "they" and "their" in this Statement proposal is based on Churchyard's conditions of acceptable use:

"Although it is uncommon for the pronouns 'they' and 'their' to be used singularly, such plural pronouns can be used with a morphologically and syntactically singular antecedent when what it refers to is semantically collective and/or generic and/or indefinite and/or unknown. (A lack of knowledge about the gender of what is referred to, or an "epicene" reference to both genders or indefinitely to either, will in many cases help to make the use of singular 'their' sound acceptable, by contributing to such semantic indeterminacy; however, note that unspecified gender is actually neither a necessary or sufficient condition for use of singular 'their.'"⁴

Proposed Amendment (A)

Replaced all instances of *her*, *his*, *he*, and *she* in all instances in the *Statement* with the use of the singular "they" or "their," as indicated below.

VI. Procedures, Stage 2: Resolution Process, p. 9, last sentence,

(5) that the student may consult with ~~his or her~~ their advisor before accepting responsibility.

VI. Procedures, A. Acceptance of Responsibility, p. 9, second sentence

Upon request, the accused student has the right to know the potential sanctions before accepting responsibility, however the accused student may not appeal if ~~he accepts~~ they accept responsibility without asking about sanctions.

VI. Procedures, C. Hearing, p. 10, fourth paragraph, second sentence

Each of the above-enumerated persons may also ask questions of (1) the accused student, if ~~he or she chooses~~ they choose to testify and (2) of any witnesses who have presented information. ... At any time during the hearing, the accused student may request a recess to consult with ~~his or her~~ their advisor.

VII. Sanctions, sections E, F & G, p. 13

E. Class/Workshop Attendance:

Enrollment and completion of a class or workshop that could help the student understand why ~~her or his~~ their behavior was inappropriate.

F. Educational Project:

Completion of a project specifically designed to help the student understand why ~~her or his~~ their behavior was inappropriate.

³ See crossmyt.com. (1993). Retrieved October 12, 2009, from, <http://www.crossmyt.com/hc/linghebr/index.html>.

⁴ <http://www.crossmyt.com/hc/linghebr/index.html>

- G. Service:
Performance of one or more tasks designed to benefit the community and help the student understand why ~~her or his~~ their behavior was inappropriate.

VIII. G. Concurrent Legal and Statement Proceedings, last sentence, p. 15

If an accused student's request for delay is denied, ~~he or she~~ they may withdraw from enrollment and may not re-enroll until authorized by the Vice President for Student Affairs or ~~his or her~~ their designee.

VIII. I. Amending the Statement, second paragraph, p. 16

The President will endeavor to communicate ~~his or her~~ their decision to accept or reject each of the proposed amendments in a public and timely manner, during the regular academic year...

Proposed Amendment (B)

In the event the above language proves unsatisfactory, a supplemental amendment is proposed in order to meet the principle of making the *Statement* more inclusive through elimination of gendered pronouns without replacing them with "they" and "their."

VI. Procedures, Stage 2: Resolution Process, p. 9, last sentence

(5) that the student may consult with ~~his or her~~ an advisor before accepting responsibility.

VI. Procedures, A. Acceptance of Responsibility, p. 9, second sentence

Upon request, the accused student has the right to know the potential sanctions before accepting responsibility, however the accused student may not appeal if ~~he the student~~ the student accepts responsibility without asking about sanctions.

VI. Procedures, C. Hearing, p. 10, fourth paragraph, second sentence

Each of the above-enumerated persons may also ask questions of (1) the accused student, if ~~he or she chooses~~ the student to testify and (2) of any witnesses who have presented information. ... At any time during the hearing, the accused student may request a recess to consult with ~~his or her~~ an advisor.

VII. Sanctions, sections E, F & G, p. 13

- E. Class/Workshop Attendance:
Enrollment and completion of a class or workshop that could help the student understand why ~~her or his~~ certain behavior was inappropriate.
- F. Educational Project:
Completion of a project specifically designed to help the student understand why ~~her or his~~ certain behavior was inappropriate.
- G. Service:
Performance of one or more tasks designed to benefit the community and help the student understand why ~~her or his~~ certain behavior was inappropriate.

VIII. G. Concurrent Legal and Statement Proceedings, p. 15, last sentence

If an accused student's request for delay is denied, ~~he or she~~ the student may withdraw from enrollment and may not re-enroll until authorized by the Vice President for Student Affairs or ~~his or her~~ the VPSA's designee.

VIII. I. Amending the Statement, p. 16, second paragraph

The President will endeavor to communicate ~~his or her~~ the decision to accept or reject each of the proposed amendments in a public and timely manner, during the regular academic year...

§3 Realignment of *Statement* Language with Educational Mission

Principle

To include and/or align information in the *Statement* to reflect the University's commitments as guaranteed in the *Statement*: "Students have the right to be protected from capricious decision-making by the University and to have access to university policies which affect them. The University has an enduring commitment to provide students with a balanced and fair system of dispute resolution" (section II, p. 5), and "The University considers the procedures for resolving disputes a part of its educational mission and is committed to a process which provides both peer review and mediation" (section VI, p. 8).

Proposed By: Michigan Student Assembly

Contributing Authors

MSA Student Rights Committee Members Vickie Hwang, Adam DeSantis, Steven Zuckerman, with consultation by OSCR staff member Carrie Landrum.

Community Support

Community members who attended the Community Dialogues in September 2009 expressed consent with this proposal.

Rationale

Living into the fact that the University considers the procedures for resolving disputes a part of its educational mission, this amendment proposes updating language in the *Statement* to reflect this educational mission and the ability to administer the *Statement* with compassion, integrity, and fairness by replacing words such as *sanctions* with *educational measures*, and *accused student* with the word *respondent*. Similarly, given that students need access to policies which affect them, those written policies need to be clear, up-to-date, and accurately reflect the implementation of those policies.

Proposed Amendment

Stage 1: Initiating the Resolution Process, p. 8, first paragraph, last sentence

...If the RC determines, based on ~~an investigation~~, a review of the information provided that the alleged behavior may be a violation of the Statement, the RC will notify the accused student ("the respondent") and schedule a meeting as described below.

VI, Procedure Stage 2: Resolution Process, p. 9

The RC will meet with the ~~accused student~~ respondent to explain the complaint and the resolution process. The student may be accompanied by an advisor. The student will have the opportunity to ask questions and make a statement. The RC will inform the respondent ~~accused student~~ (1) that statements the student makes to the RC may be considered at any hearing, (2) that the student does not have to make a statement at the initial meeting, (3) that all OSCR records are confidential to the extent permitted by law, (4) that the student has a right to know the potential ~~sanctions~~ educational measures before admitting responsibility choosing a resolution pathway (~~but may not appeal if the student accepts responsibility without asking about sanctions~~), and (5) that the student may consult with his or

her advisor before ~~accepting responsibility~~ choosing a resolution pathway or entering into an agreement.

The ~~accused student~~ respondent has a choice of the following methods of dispute resolution:

A. Acceptance of Responsibility

The ~~accused student~~ respondent has the option of ~~accepting responsibility for the charges and accepting the sanction chosen by the RC. Upon request, the accused student has the right to know the potential sanctions before accepting responsibility, however the accused student may not appeal if he accepts responsibility without asking about sanctions. The accused student also has the option of accepting responsibility for the charges and requesting a hearing on the sanctions under the procedures outlined in VI.2.C. "Hearing."~~

A. Entering into an Agreement

If the respondent is in general agreement with what is alleged in the complaint, and is in general agreement with the complainant and/or community (as represented by the RC) about how to resolve the conflict and restore the community, the respondent has the option of entering into an agreement. In resolution by agreement the respondent accepts responsibility for the alleged violation(s) of the Statement and agrees to fulfill educational measures crafted with the input of the respondent, the complainant, and the RC. The respondent has the right to discuss potential educational measures before entering into an agreement. Once an agreement has been reached, it may not later be appealed. The respondent also has the option of entering into an agreement by accepting responsibility for the alleged violations of the Statement and requesting a hearing on educational measures under the procedures outlined in VI.2.C. "Hearing."

C. Hearing, p. 10

The ~~accused student~~ respondent may choose to have a Resolution Officer or a Student Resolution Panel arbitrate the dispute. In cases which involve more than one ~~accused student~~ respondent, the students will have the option of choosing whether they have the same or separate hearings. If students cannot agree, the hearings will be separate. Should the complainant disagree with the ~~accused student~~ respondent's choice, an RO will determine whether an RO or a panel is most appropriate for the complaint based on explanations submitted by the parties.

Each party may be accompanied at the hearing by a personal advisor, who may be an attorney; however, the advisor may not participate directly in the proceedings, but may only advise the party. For example, the advisor may not question witnesses or make presentations.

~~At a hearing, the RC will be in charge of preparing and submitting information gathered during the investigation. Both~~ All parties may have access to all written or other information that will be considered prior to the hearing ~~including Both parties have the right to the names of witnesses providing information. The RC will prepare and distribute this information~~ prior to the hearing.

During the hearing, the RO, RC, ~~accused student, complaining witness~~ respondent, complainant and student panelists (if applicable) have the right to question the complainant ~~complaining witness~~ and the RC. Each of the above-enumerated persons may also ask questions of (1) the ~~accused student~~ respondent, if he or she the student chooses to ~~testify~~ participate and (2) of any witnesses who have presented information. Silence by the ~~accused~~ respondent will not be used as evidence of responsibility for a charge violation. Witnesses may be present in the hearing room only when they are presenting

information. At any time during the hearing, the ~~accused student~~ respondent may request a recess to consult with ~~his or her~~ an advisor. The ~~accused student~~ respondent and the complainant may call any witness whose information is of value to the case, but the RO may exclude a witness if the witness is duplicative.

The ~~accused student, complaining witness,~~ respondent, complainant and RC may also present written reports to the panel or RO. The ~~accused student and complaining witness,~~ respondent and complainant may make statements to the panel or RO at the beginning and end of the proceeding.

To ensure the privacy of the parties and to maximize the educational potential of the process, ~~both~~ all parties must agree to the admission of any other people (except witnesses or advisors) to the hearing. To ensure fairness and consistency, and to maximize the educational potential of the process, panelists must have access to details, rationales, and results of past cases. The ~~student~~ respondent is presumed not responsible unless clear and convincing evidence is presented that a violation of the Statement has occurred.

An ~~tape~~ audio recording will be made of Statement hearings, and will be made available (in the OSCR office) to the ~~accused student or complaining witness~~ respondent or complainant upon request during the period in which an appeal may be filed or is pending. In all cases, the RO will issue a written decision containing findings of fact, conclusions as to responsibility, and rationales for all ~~sanctions~~ educational measures imposed.

All arbitrated resolutions will result in findings of fact. The fact-finder will also make recommendation(s) regarding ~~sanctions~~ educational measures to the Dean of Students, who may accept or modify the recommendation(s). The Dean may not modify a ~~sanction~~ educational measures to include suspension or expulsion. However, when expulsion is recommended, the Dean may instead suspend the student.

VI Procedures, Stage 3: Appealing the Resolution Process, p. 11

An appeals process is an essential safeguard for an imperfect human process that attempts very hard to be fair. The appeal process is available to each party. Appeals may be filed for the following reasons: proper procedures were not followed, the evidence clearly does not support the finding(s), ~~sanctions~~ educational measures are insufficient or excessive relative to the violation, or there is new evidence not reasonably available at the time of the hearing. All appeals must be submitted in writing to the RC within 10 academic calendar days after notification of the Dean of Students' decision to accept or modify the recommendations resulting from the hearing. The VPSA may waive the 10 day limitation when a late submission is reasonable. The appeal will be reviewed by an Appeals Board composed of one student appointed by the Michigan Student Assembly, one faculty member appointed by the Faculty Senate, and one administrator appointed by the President. MSA, the Faculty Senate, and the President will each appoint one alternate member to the Appeals Board. The Appeals Board will recommend one of the following actions to the VPSA: (a) confirming the decision made through the hearing process, (b) altering the ~~sanctions~~ educational measures, (c) striking the initial finding of responsibility and/or ~~sanctions~~ educational measures and remanding to the original fact-finder for further consideration with corrective instructions from the Appeals Board, or (d) ordering a new hearing before a new fact-finder. The VPSA may accept or modify the recommendation(s). The VPSA may not modify a ~~sanction~~ educational measures to include suspension or expulsion. However, when expulsion is recommended, the VPSA may instead suspend the student.

VII. ~~Sanctions~~-Educational Measures, p. 12

~~Sanctions~~-Educational Measures are designed to promote the University's educational mission. ~~Sanctions~~-Educational Measures may also serve to promote safety or to deter students from behavior which harms or threatens people or property or is motivated by bias because of membership in a group listed in II¶2. Some behavior is so harmful to the University community or so deleterious to the educational process that it may require more serious ~~sanctions~~-educational measures: removal from housing, removal from specific courses or activities, suspension from the University, or expulsion. No ~~sanctions~~-educational measures will automatically impose other ~~sanctions~~ educational measures following future ~~offenses~~ violation(s) of the Statement. One or more of the following ~~sanctions~~ educational measures may be recommended:

VIII. Related Procedures, p. 14

C. Selection of Mediators, Student Panelists, and Resolution Officers

University mediators will be selected by the VPSA or the VPSA's designee. A list of trained non-university mediation services will be maintained by the Office of the Vice President for Student Affairs. The VPSA will try to identify non-university mediators who will serve parties at no charge or on a sliding fee scale. A neutral mediator will be assigned to each mediation. A pair of multipartial mediators will be selected for each mediation based on preferences expressed by the parties. Each winter term 60 students will be appointed to serve as panelists for the following academic year. The VPSA or designee will generate a random ordered list of potential student panelists using a method approved by MSA which is expected to encourage a diverse pool of students. The students will be contacted and asked if they will serve as panelists for the following year, subject to the approval by MSA and other respective student government bodies, until the designated number of student panelists has been appointed. Resolution Officers are recommended equally by the Faculty Senate and the VPSA. Each Student Resolution Panel will consist of five voting student panelists and a non-voting Resolution Officer who will oversee the proceedings.

D. Records of Resolution Actions, p. 14-15

Records will be maintained by the RC with regard to any and all actions taken under the Statement. Accordingly, records will be maintained by the RC of complaints, ~~mediations~~, agreements, hearings, findings, and educational measures ~~sanctions~~. For each case in which a complaint is issued, including cases where the student accepts responsibility, the record will recite the facts of all conduct found or admitted to be in violation of the Statement with sufficient specificity to indicate that a violation of the Statement occurred. Confidentiality of records will be maintained to the extent permitted by law and the *University of Michigan Student Rights and Student Records Policy*.

<http://www.umich.edu/~regoff/ferpa/>

Records of mediations or other ACR processes are not considered a disciplinary record. ACR records will be maintained as appropriate to meet the needs of disputants and for annual reporting purposes.

E. Reports of Actions, p. 15

Statistical reports of actions taken through the Statement will be published following each academic term. These data will cover the number of complaints and the types of violations, resolutions, and ~~sanctions~~ educational measures. Periodic, regular review of records of resolution actions will be made available, in confidence, to the Code of Conduct Advisory Board Chair of MSA. Personally identifiable information will be removed from all records prior to any review.

§4 Inclusion of Adaptable Conflict Resolution

Principle

To include and/or align information in the *Statement* to reflect the University's commitments as guaranteed in the *Statement*: "Students have the right to be protected from capricious decision-making by the University and to have access to university policies which affect them. The University has an enduring commitment to provide students with a balanced and fair system of dispute resolution" (section II, p. 5), and "The University considers the procedures for resolving disputes a part of its educational mission and is committed to a process which provides both peer review and mediation" (section VI, p. 8).

Proposed by: Michigan Student Assembly

Contributing Authors

MSA Student Rights Committee Members Vickie Hwang, Adam DeSantis, Steven Zuckerman, with consultation by OSCR staff members Carrie Landrum and David Votruba

Community Support

Community members who attended the Community Dialogues in September 2009 expressed consent with this proposal.

Rationale

Many students, particularly those involved in alcohol and/or drug-related incidents, may not be aware of Adaptable Conflict Resolution (ACR) pathways offered by OSCR which, if successfully completed, do not result in a disciplinary record. Students who choose to participate in these Adaptable Conflict Resolution pathways related to alcohol and/or other drugs agree to educate themselves about alcohol and/or drug usage and resources. This is a relatively new program, yet it has been very helpful for many students. It is important to incorporate this information in the *Statement of Student Rights and Responsibilities* so that students are aware of the process and can engage resources available to them.

In addition to ACR pathways for alcohol and/or drug-related incidents, OSCR offers a variety of ACR pathways, including mediation, which are available to students involved in conflicts related and unrelated to the *Statement*, and this is not mentioned anywhere in the *Statement*.

Proposed Amendment

VI. Procedures, p. 8, second sentence

The University considers the procedures for resolving disputes a part of its educational mission and is committed to a process which provides both peer review and adaptable conflict resolution pathways including mediation...

Stage 1: Initiating the Resolution Process, p. 8

Any student, faculty member, or staff member may initiate conflict resolution by contacting a Resolution Coordinator (RC) to identify potential pathways for resolution. Resolution processes include Adaptable Conflict Resolution (ACR) and Formal Conflict Resolution (FCR). One way to initiate conflict resolution is for a ~~Any~~ student, faculty member, or staff member may to submit a complaint alleging a violation of

the Statement. A student, faculty member, or staff member may also submit a complaint based upon information reported to that person. Adaptable Conflict Resolution (ACR) pathways may be accessed with or without filing a complaint and with or without the alleged behavior falling under the Statement. To initiate Formal Conflict Resolution (FCR), all complaints must be submitted to the Resolution Coordinator (RC), in writing, within six months after the incident(s) alleged in the complaint. The RC may waive the six-month limitation when a late submission is reasonable...

B. Mediation and other Adaptable Conflict Resolution, p. 9

If (1) all persons personally and directly affected by the conflict agree to resolve the complaint through mediation or other Adaptable Conflict Resolution (ACR) process, and (2) if the RC believes that ~~mediation~~ the ACR process is an appropriate form of resolution, then the RC will make arrangements for ~~ACR the mediation~~ to occur. The nature of some complaints, especially those involving violence, may make ~~mediation~~ these processes an unrealistic option.

Students involved in alcohol and/or drug-related incidents may have the option to choose an Adaptable Conflict Resolution pathway for these incidents to educate themselves on alcohol and/or drug usage and resources. Successful completion of such an ACR pathway resolves the incident without incurring a disciplinary record with the university.

When the RC makes arrangements for ACR to occur, parties may be offered an opportunity to specify facilitator preferences ~~will be offered the choice of using a University or a non-university mediator.~~

~~Mediation~~ ACR is a voluntary process which may or may not result in a ~~mediated agreement resolution~~. When a ~~mediated agreement resolution~~ through ACR is reached by the parties, the case is resolved, no disciplinary record is produced, and parties are encouraged to use the RC as a resource for future questions. ~~Mediated agreements~~ Resolution through ACR may not be appealed.

If resolution is not reached through ACR and the matter involves a pending Statement violation, the matter is referred to FCR and the respondent ~~If the mediator reports that mediation has failed, the accused student~~ has the choice of accepting responsibility entering into an agreement or proceeding to a hearing, either of which may result in a disciplinary record.

§5 Standard of Evidence Change

Principle

The *Statement* requires that evidence presented in cases meet the “clear and convincing” threshold before a finding of responsibility can be made. This amendment proposes changing the standard of evidence in the *Statement* to the “preponderance of the evidence” standard.

Proposed by: Michigan Student Assembly

Contributing Authors

Contributing authors to this proposal include students, faculty and/or staff from the following entities:

- MSA Women's Issues Commission
- F-Word student organization
- University Students Against Rape student organization
- Center for the Education of Women
- Office of Institutional Equity
- Office of Greek Life
- Rackham Office of Graduate Student Affairs
- Sexual Assault Prevention and Awareness Center
- Some members of the Campus Safety and Security Advisory Commission
- President's Advisory Commission on Women's Issues

Community Support

- MSA Women's Issues Commission (formal endorser of the proposal)
- F-Word student organization (formal endorser of the proposal)
- University Students Against Rape student organization (formal endorser of the proposal)
- Center for the Education of Women (formal endorser of the proposal)
- Office of Institutional Equity
- Office of Greek Life
- Rackham Office of Graduate Student Affairs
- Sexual Assault Prevention and Awareness Center
- Some members of the Campus Safety and Security Advisory Commission
- President's Advisory Commission on Women's Issues (formal endorser of the proposal)
- MSA Executive Board and MSA's Student Rights Commission
- Judicial Vice Presidents for the Interfraternity Council and the Panhellenic Association
- Community members who attended the Community Dialogues in September 2009

Rationale

Given that 20%- 25% of American women experience an attempted or completed rape in college,⁵ sexualized violence is a perennial concern for the President's Advisory Commission on Women's Issues (PACWI) and many other groups and offices on campus. PACWI requested and met this

⁵ Fisher B.S., Cullen F.T. & Turner, M.G. 2000. *The sexual victimization of college women*. Washington, DC: U.S. Department of Justice, National Institute of Justice; Publication No. NCJ 182369.

spring with staff from the Office of Student Conflict Resolution (OSCR) and the Office of Institutional Equity (OIE) to discuss sexual harassment and assault cases. The Commission learned that the Statement of Student Rights and Responsibilities requires a higher standard of proof than that used by OIE when evaluating evidence.

The “preponderance of the evidence” standard is the one most often used by college offices that handle student conduct complaints.⁶ The standard can be defined as “that amount of evidence that makes it more likely than not that the facts demonstrate a violation of college policy.” Current language in U of M’s *Statement*, however, requires that evidence presented in cases meet a stricter “clear and convincing” threshold before a finding of responsibility can be made. Where the preponderance of the evidence standard requires that a complaint reviewer is persuaded that a policy violation occurred, the clear and convincing standard requires that the reviewer be convinced that it occurred.

Eight Reasons Why the Statement of Student Rights & Responsibilities Should Require Use of the Preponderance of the Evidence Standard:

Student and faculty/staff processes are currently inequitable

The Statement only applies to cases in which the person alleged to have acted improperly (the respondent) is a student. OSCR administers the resolution process as it is defined in the Statement. OIE reviews discrimination and harassment complaints lodged against faculty and staff.⁷ Under the current Statement, the University is placing a higher burden of proof on complainants when the respondent is a student. This means that it is harder to make a finding that discrimination, harassment, or assault occurred for OSCR cases that involve a student respondent than it is for OIE cases where the respondent is a faculty or staff member. (Cases involving accused student employees are reviewed under the OIE process if the student was acting in his or her role as an employee.)

Lack of investigative authority limits the amount of evidence available

Though the Statement references an investigation by the Resolution Coordinator, this “investigation” is merely a review of the information that is provided by the parties to the case. The OSCR Resolution Coordinator’s role is to coordinate the process, not to serve as an investigator. Unlike civil and criminal proceedings outside academia, there is no discovery process or investigative authority. Neither the Resolution Coordinator nor the volunteers who participate as Resolution Officers or Student Resolution Panelists have subpoena power to compel parties to submit evidence related to the case. This lack of investigative authority may result in a case where additional information existed but was not submitted and/or the evidence that was submitted did not rise to the level of clear and convincing. In these instances, a Resolution Officer or Student Resolution Panel may believe there has been a violation of the Statement, but the limited amount of available evidence hinders a finding of responsibility.

Level of evidence required should be commensurate with the consequences

The preponderance of evidence standard is appropriate for an educational institution with a conflict resolution process that focuses on being student-driven and educational as opposed to punitive. The

⁶ Sokolow, B.A., Antieau, M.L., Lewis, W.S., & Rowe, L.P. 2004. *The 2001 judicial training video seminar training manual*. Malvern, PA: National Center for Higher Education Risk Management.

⁷ See, for example, Section 3.c. of the University of Michigan’s Procedural Guidelines for Handling Discrimination and Harassment Complaints, adopted unanimously by the faculty Senate Assembly in conjunction with the University’s Sexual Harassment policy for faculty and staff (SPG 201.89-0), effective 4/1/09.

Statement is administered with the goal of enhancing student learning and development, supporting the well-being and success of all community members, and fostering a community that values civility, dignity, diversity, education, equality, freedom, honesty, and safety. Possible sanctions for violations of the Statement include actions like a formal reprimand, community service, workshop attendance, removal from University Housing or certain classes, or no contact allowed with the complainant. It is important to note that sanctions such as temporary suspension or expulsion are very rarely exercised.

Sanctions under the Statement differ significantly from the punitive consequences of incarceration, probation, fines or monetary damages used in the civil and criminal systems, which understandably carry with them a higher standard of evidence. Since the University operates with an educational intent, the standard of proof should be commensurate, particularly as the Statement provides essential safeguards such as peer review (students may opt to have their case heard by a panel of students), unanimity (student resolution panels may only make a finding of responsibility by unanimous consensus), and an appeals process.

Preponderance of the evidence is the best practice based on law and regulation

Federal laws for addressing sex discrimination complaints by employees and students are defined under Title VII and Title IX, administered respectively under the U.S. Departments of Labor and Education. Law under Title VII requires that offices like OIE use the preponderance of the evidence standard. Guidance from the Department of Education advises that the preponderance of the evidence standard is preferable to the clear and convincing standard. Changing the Statement process so it uses the same standard as OIE would therefore ensure that student disciplinary cases at U of M are handled using the legally recognized best practice.

Preponderance of the evidence is the professional best practice

The national Association for Student Conduct Administration⁸ recommends that determinations of responsibility for violations of code be made based on the preponderance of the evidence standard. One of the underpinnings of ASCA's Model Code is that the process should treat students even-handedly.

“The ‘clear and convincing’ and ‘beyond a reasonable doubt’ standards treat the Accused Student as more important than the student who believes s/he was a victim of misconduct.” Furthermore, these standards suggest that the Accused Student has “more important interests than all other members of the academic community have in the maintenance of a calm, peaceful and productive living/learning environment. The ‘preponderance’ standard correctly treats each one of these constituencies as equally important when a fact finder tries to decide what happened when the facts are disputed.”⁹

Thus it seems incongruent that the University of Michigan, which values respect and equitable treatment, would use the “clear and convincing” standard and thereby place the accused student in a stronger position than the complainant.

⁸ ASCA was formerly known as the Association for Student Judicial Affairs.

⁹ Stoner, E.N. & Lowery, J.W. 2004. *Navigating Past the “Spirit of Insubordination”: A Twenty-First Century Model Student Conduct Code with a Model Hearing Script*, 31 *The Journal of College and University Law* 1, p.49.

Having two standards for civil rights cases is incongruent with UM values

The University's Non-Discrimination Policy is intended to safeguard and protect the civil rights of our students, faculty and staff and visitors in matters involving race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression, disability, religion, height, weight, or veteran status. With the exception of sexual orientation, these same classes are also protected under civil rights laws and policies of the federal and/or state governments. When courts review civil rights matters under these laws, the standard of proof they use is preponderance of the evidence.

The Statement's use of the clear and convincing evidence standard creates two separate standards of proof for civil rights matters -- one for student respondents and another for faculty/staff respondents. This is inconsistent with the University's policy of fair treatment for all campus citizens. Indeed, this is inconsistent with one of the core values of the University -- "an abiding commitment to sustaining a community in which the dignity of every individual is respected."¹⁰

Rackham cases of academic misconduct are judged under preponderance of the evidence

The University's largest college, the Rackham Graduate School, uses the preponderance of evidence standard in deciding cases under its Academic Integrity and Professional Misconduct policy. It sends mixed messages to students and others if the standard used to evaluate cases of behavioral misconduct is stricter than the standard used in cases of academic misconduct.

Standards of Conduct for Recognized Student Organizations will use preponderance standard

The Office of Student Activities and Leadership (SAL) administers the Student Organization, Advancement and Recognition (SOAR) program. Under this program, student organizations may be recognized and receive benefits from the University. Consistent with the program, student organizations are subject to a code of conduct -- the Standards of Conduct for Recognized Student Organizations. The accountability process that implements and enforces these standards is being updated currently. SAL has proposed to use preponderance of the evidence as the standard for determining whether there has been a violation. Both of the established student governing bodies (disciplinary boards that conduct hearings under the SOAR Accountability Process) -- the Central Student Judiciary and the Greek Activities Review Panel -- have agreed to use this evidentiary standard for their hearings under the program. Thus, student organizations will be subject to a different evidentiary standard than individual students. This suggests that the Statement, adopted prior to the ASCA's Model Code, is out of step with the current trend and best practices related to student discipline.

Proposed Amendment

VI. Procedures, Stage 2, C. Hearing, p. 10, last sentence

The student is presumed not responsible unless ~~clear and convincing~~ a preponderance of the evidence is presented that a violation of the Statement has occurred.

¹⁰ 2006. *University of Michigan Campus Commitment*. Ann Arbor, MI: University of Michigan Office of Institutional Equity.

§6 Inclusion of Intimate Partner Violence as a Violation

Principle

To include the perpetration of intimate partner violence, also known as domestic violence, as a violation of the *Statement* (as prohibited in University of Michigan General University Policies and Procedures).

Proposed by: Michigan Student Assembly

Contributing Authors

Sexual Assault Prevention and Awareness Center students and staff, and community members who attended the Community Dialogues in September 2009

Community Support

President's Advisory Commission on Women's Issues, and community members who attended the Community Dialogues in September 2009.

Rationale

Background:

Intimate partner violence is defined by the Office on Violence Against Women of the US Department of Justice as: "a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner."¹¹ Such behaviors may include physical, sexual, verbal or emotional, psychological, and economic abuse¹². Intimate partner violence is also known as domestic violence, dating violence, or abuse¹³. Intimate partner is defined by the Office on Violence Against Women as those "who are married, living together, or dating."¹⁴ Dating violence is further defined as those who are or have been "in a social relationship of a romantic or intimate nature."¹⁵

Currently intimate partner violence is not specified in the Statement of Student Rights & Responsibilities as one of the behaviors that "contradict the values of the University community and are subject to action under this statement."¹⁶ Instead, intimate partner violence may or may not fall under the current violations of: "A. Physically harming another person including acts as killing, assaulting, or battering"; "B. Sexually assaulting another person"; "C. Sexually harassing another person"; "E. Stalking or harassing another person"; "M. Stealing, vandalizing, damaging, destroying, or defacing University property or the property of others."¹⁷

¹¹ US Department of Justice, Office on Violence Against Women (2009). About Domestic Violence. <http://www.ovw.usdoj.gov/domviolence.htm>.

¹² Centers for Disease Control and Prevention (2006). Understanding Intimate Partner Violence. <http://www.cdc.gov/ViolencePrevention/pdf/IPV-FactSheet.pdf>.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ US Department of Justice, Office on Violence Against Women (2009). About Dating Violence. <http://www.ovw.usdoj.gov/ovw-fs.htm>.

¹⁶ The Office of Student Conflict Resolution. The Statement of Student Rights & Responsibilities. Updated 7/1/2007. <http://www.oscr.umich.edu/statement/>.

¹⁷ Ibid.

In other words, the current violations do not include verbal or emotional, psychological, and economic abuse associated with intimate partner violence. Verbal or emotional abuse is defined as a pattern of behavior “undermining an individual’s sense of self-worth and/or self-esteem...[such as] constant criticism, diminishing one’s abilities, [or] name-calling.”¹⁸ Psychological abuse is defined as a pattern of behavior “causing fear by intimidation; threatening physical harm to self, partner, children, or partner’s family or friends...and forcing isolation from family, friends, or school and/or work.”¹⁹ Economic abuse is defined as “making or attempting to make an individual financially dependent by maintaining total control over financial resources, withholding one’s access to money, or forbidding one’s attendance at school or employment.”²⁰

Justification:

The following reasons listed below (1-8) are a rationale for why intimate partner violence should be added as a violation to the Statement of Student Rights & Responsibilities.

- 1) Intimate partner violence goes against the values listed in the Statement of Student Rights and Responsibilities, specifically the values of “civility, dignity...equality, freedom, honesty, and safety.”²¹

- 2) Intimate partner violence goes beyond the scope of the current violations in the Statement of Student Rights and Responsibilities. Intimate partner violence involves a multitude of abusive behaviors in the area of power and control, which intimidate, threaten, manipulate, humiliate, degrade, reject, blame, minimize, deny, coerce, isolate, or frighten someone²². As explained above, the current violations do not include verbal or emotional, psychological, or economic abuse. Studies suggest, however, that limiting the definition of intimate partner violence to only physical or sexual abuse ignores the larger scope of the problem²³. Likewise inclusion of other facets of intimate partner violence provide a more accurate and comprehensive picture²⁴.

- 3) Intimate partner violence has no boundaries. Although there are some disparities, intimate partner violence can happen to anyone regardless of age, race, ethnicity, nationality, ancestry, socioeconomic class, education, gender, sexual orientation, religion or marital status²⁵. Studies suggest that nearly 25% of all women have experienced intimate partner violence during their lifetime²⁶.

¹⁸ US Department of Justice, Office on Violence Against Women (2009). About Domestic Violence.

<http://www.ovw.usdoj.gov/domviolence.htm>.

¹⁹ Ibid.

²⁰ Ibid.

²¹ The Office of Student Conflict Resolution. The Statement of Student Rights & Responsibilities. Updated 7/1/2007. <http://www.oscr.umich.edu/statement/>.

²² Domestic Abuse Intervention Project. Power and Control Wheel. Duluth, MN. <http://www.theduluthmodel.org/>.

²³ DeKeseredy, WS. (2000). Current Controversies on Defining Nonlethal Violence Against Women in Intimate Heterosexual Relationships: Empirical Implications. *Violence Against Women*, 6, 728-746.

²⁴ DeKeseredy, WS. (2000). Current Controversies on Defining Nonlethal Violence Against Women in Intimate Heterosexual Relationships: Empirical Implications. *Violence Against Women*, 6, 728-746.

²⁵ Field CA, Caetano R (2005). Intimate Partner Violence in the U.S. General Population: Progress and Future Directions. *Journal of Interpersonal Violence*, 20(4), 463-469.

²⁶ Centers for Disease Control and Prevention (2006). Understanding Intimate Partner Violence.

<http://www.cdc.gov/ViolencePrevention/pdf/IPV-FactSheet.pdf>.

4) The term “intimate partner violence” is all-inclusive. Rather than the term “domestic violence,” the term “intimate partner violence” does not imply gender, sexual orientation, or marital status²⁷.

5) Intimate partner violence is present on college campuses, including the University of Michigan campus. Rates of intimate partner violence are particularly high among young women ages 16-24 in the US, a period of time when women may be targeted since they are less likely to understand what constitutes a healthy relationship²⁸. Overall, females between the ages of 20-24 and 25-34 are at the greatest risk of non-fatal intimate partner violence²⁹. One estimate is that 32% of college students are survivors of intimate partner violence including but not limited to emotional abuse³⁰.

6) Intimate partner violence is dangerous and a real threat to our community. In 2004 alone, intimate partner violence resulted in 1,544 deaths in the United States, of which 75% were females³¹. It is estimated that over 1/3 of all female murder victims are killed by an intimate partner³². As of 2005, the number of intimate partner murders by boyfriends and girlfriends is equal to that of spouses³³.

7) Intimate partner violence has devastating physical and psychological effects for survivors. Intimate partner violence costs an estimated \$4.1 billion annually in direct health care costs including mental health services, as well as \$1.8 billion in productivity losses³⁴. It is estimated that women in abusive relationships are 3 times more likely to be diagnosed with depression³⁵. Likewise, women in abusive relationships are 4 times more likely to suffer from post-traumatic stress disorder as a result of intimate partner violence³⁶. Other psychological and social effects of intimate partner violence include fear and anxiety, sleep disorders, hopelessness, low self-esteem, social withdrawal, suicidal ideation, body dysmorphic disorder, and eating disorders³⁷. Intimate partner violence is also associated with increased school absenteeism and drop-out rates for survivors, as well as high risk behaviors such as alcohol and drug use³⁸.

8) Intimate partner violence is the focus of the new University of Michigan Abuse Hurts initiative. The initiative is aimed at improving how the University responds to intimate partner violence for all members of the UM community, including but not limited to: creating greater awareness about intimate

²⁷ Department of Justice, National Institute of Justice. Intimate Partner Violence. Updated 10/24/2007.

<http://www.ojp.usdoj.gov/nij/topics/crime/intimate-partner-violence/welcome.htm>.

²⁸ Fisher, B, Sloan JJ, Cullen F (1995). Final Report: Understanding Crime Victimization Among College Students: Implications for Crime Prevention. US Department of Justice, Washington DC.

²⁹ Catalano S (2006). US Department of Justice, Bureau of Justice Statistics. Intimate Partner Violence in the United States. <http://www.ojp.usdoj.gov/bjs/>.

³⁰ Centers for Disease Control and Prevention (1999). Youth Violence and Suicide Prevention Program.

<http://www.cdc.gov/ViolencePrevention/youthviolence/index.html>.

³¹ US Department of Justice, Bureau of Justice Statistics. Homicide Trends in the United States. Updated 7/11/2007. <http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm>.

³² Ibid.

³³ Ibid.

³⁴ Centers for Disease Control and Prevention (2006). Understanding Intimate Partner Violence. <http://www.cdc.gov/ViolencePrevention/pdf/IPV-FactSheet.pdf>.

³⁵ Stark E, Flitcraft A (1996). Women at Risk: Domestic Violence and Women’s Health. London: Sage Publications.

³⁶ Golding JM (2002). Intimate Partner Violence as a Risk Factor for Mental Disorders: a Meta-Analysis. Journal of Family Violence, 14, 99-132.

³⁷ Centers for Disease Control and Prevention (2006). Understanding Intimate Partner Violence.

<http://www.cdc.gov/ViolencePrevention/pdf/IPV-FactSheet.pdf>.

³⁸ Ibid.

partner violence through a marketing and educational campaign, and identifying current gaps in University policies and procedures³⁹. In fact, the Abuse Hurts initiative is currently creating University procedural guidelines around intimate partner violence for the policy listed in the recommendation (Violence in the University Community, SPG 601.18). Therefore, this recommendation supports the efforts of the Abuse Hurts initiative, as well as other ongoing University-wide initiatives such as Expect Respect⁴⁰.

Proposed Amendment

IV. Violations, p. 6 [proposal to add language]

- F. Perpetrating intimate partner violence (also known as domestic violence, as prohibited in University of Michigan General University Policies and Procedures: <http://spg.umich.edu/pdf/601.18.pdf>).

Note: If this amendment is adopted as violation F, all other violations would need to be re-lettered.

³⁹ The University of Michigan Center for the Education of Women. CEW In Action: Domestic Violence. <http://www.umich.edu/~cew/cewaction/violence.html>.

⁴⁰ The University of Michigan Give it. Get it. Expect Respect. <http://urespect.umich.edu/>.

§7 Amending the Amendment Process

Principle

To make the amendment process more accessible by clarifying the process articulated in the *Statement* and allowing “any student” to submit an amendment.

Proposed by: Michigan Student Assembly

Contributing Authors

Adam DeSantis, Steven Zuckerman and Vickie Hwang; Community Dialogue participants.

Community Support

Community members who attended the Community Dialogues in September 2009 expressed consent with this proposal.

Rationale

Background and Justification

The amendment process as currently stated in the *Statement of Student Rights and Responsibilities* is unclear. While discussing amendments to be proposed to SACUA this year, it became clear that a lot of people were eager and interested to amend the *Statement* however they were not sure how to do so. Since the *Statement* is a community-developed document, we believe that by clarifying the amendment process and making sure that all students can submit amendments; this will encourage more community involvement to ensure that the *Statement* continues to be relevant to our university’s students.

We would like to rewrite the amendment process to:

- (1) Clarify the process so that anyone interested in proposing an amendment will understand the procedure.
- (2) Make the amendment process more accessible so that any student can submit an amendment.

Proposed Amendment

I. Amending the Statement of Student Rights and Responsibilities, p. 16

~~The Michigan Student Assembly, the Senate Assembly, or the Executive Officers of the University may propose amendments to the Statement. All proposed amendments will be reviewed by the Students Relations Committee of SACUA. After consultation with each of the above mentioned groups, the Student Relations Committee will forward the proposed amendments to the President of the University with the committee's recommendation on implementation. The final decision on amending the Statement will be the President's.~~

~~The President will endeavor to communicate his or her decision to accept or reject each of the proposed amendments in a public and timely manner, during the regular academic year. It is suggested that the President's communication to the student body state a rationale for each decision to reject an amendment.~~

The Statement is a dynamic document subject to regular revisions on a timeline set by the Student Relations Advisory Committee (SRAC). SRAC is a committee of SACUA, the Senate Advisory Committee on University Affairs. The Board of Regents has provided SRAC with primary oversight of the review process, which is outlined in Section VIII of the Statement.

The Statement undergoes an amendment process whereby any amendments introduced in an amendment year become effective in July of the following year. The opportunity for community input begins in January of an amendment year and will continue throughout the process. The SRAC must receive all refined and vetted amendment proposals by November of the amendment year. SRAC will conduct a formal review of all proposed amendments from November until January. At that point, all proposed amendments will be reviewed by the Office of the Vice President and General Counsel and the Civil Liberties Board, before SRAC forwards recommendations regarding proposed amendments to the Office of the President in March. Once approved by the President, final Statement amendments will be announced to the community in April.

Campus community members are encouraged to participate in this process. A review of the amendment timeline with answers to frequently asked questions (FAQ) about the amendment process is available at: <http://oscr.umich.edu/statement/statementFAQ.html>.

Pursuant to the Statement, amendments may be proposed by any student, the Michigan Student Assembly (MSA), the Faculty Senate Assembly, or the Executive Officers of the University. The process for submitting proposed amendments is designed to ensure representation of each campus constituency (students, faculty and staff) through their representative leadership.

To submit proposal ideas to MSA, contact the Students Rights Commission of the Michigan Student Assembly. They may be contacted by e-mail at MSA_Student_Rights@umich.edu.

To submit proposal ideas to the Faculty Senate: <http://www.umich.edu/~sacua/message.html>.

To submit proposal ideas directly to an Executive Officer: <http://www.regents.umich.edu/about/eolist.html>.

Students who wish to submit proposal ideas directly to SRAC or its designee may contact SACUA at www.umich.edu/~sacua/index.htm.