**Internal Communication Review Process for Employee Misconduct**

**Purpose**

The purpose of this process is to guide University leaders in communicating about employee misconduct. These communications should reflect the University’s commitment to ensure a safe and respectful working and learning environment while adhering to employee privacy rights required by law. With this process, the University endeavors to increase transparency, promote accountability, and build trust and awareness within the University community.

**Applicability**

This Review Process should be followed when a University leader is considering a proactive internal communication regarding employee misconduct. This process does not apply to leaders in MSU’s Office for Civil Rights making internal communication regarding an investigation into a report that an employee may have violated the *Relationship Violence and Sexual Misconduct and Title IX Policy (RVSM & Title IX Policy)* or the *Anti-Discrimination Policy (ADP)*.[[1]](#footnote-1)

**Review Team**

Representatives of the following units/offices will review the need for and substance of proposed communications:

* Department, college, or unit leadership
* MSU Office for Civil Rights and Title IX Education and Compliance (OCR) for RVSM, Title IX, or ADP matters
* Office of Faculty and Academic Staff Affairs/Office of Employee Relations (OER)
* Office of General Counsel (OGC)
* University Communications
* Presidential Advisors on RVSM (for RVSM & Title IX cases)

**Process**

1. A department, college, or unit leader who is considering sending an applicable internal communication must discuss the considerations listed below with:
	1. the Associate Vice President for the Office for Civil Rights (or designee) for RVSM, Title IX, and ADP matters, and
	2. Office of Faculty and Academic Staff Affairs/Office of Employee Relations (OER) as applicable.
2. The department, college, or unit leader may draft a communication and send to the Review Team. Office of Faculty and Academic Staff Affairs/Office of Employee Relations (OER) will advise on the appropriate contact in OGC and University Communications.
3. The Review Team will review the considerations, the draft communication, and determine any additional steps needed (*e.g.* contacting claimant(s) for input and/or awareness). The Review Team will make reasonable efforts to make decisions regarding the communication in a prompt manner.
4. Office of Faculty and Academic Staff Affairs/Office of Employee Relations (OER) and OGC must approve the final version of the communication.
5. For any communication, the Review Team will also determine:
	1. Sender
	2. Recipients
	3. Date/Time the communication will be sent
	4. Whether there will be separate notification to claimant(s)/respondent(s)/employee(s) accused of misconduct
	5. To whom questions can be directed (and anticipated Q&A document if needed)

**Considerations**

* **What is the goal of the proposed communication?**
	+ Remedy – to restore or preserve a claimant’s access to educational or employment opportunities
	+ Protection – to protect a claimant from further discrimination, harassment, or other misconduct
	+ Climate – to address impact of conduct or the investigation within a department, college, unit or other group; in Title IX matters, this should be evidence-based (consider whether there is evidence that a communication or statement could improve climate or culture)
	+ Prevention – to prevent repeat behavior by the respondent or others
	+ Monitoring – to allow for more effective monitoring of sanctions
	+ Awareness – to encourage others to come forward with concerns
	+ Transparency/Accountability – to demonstrate that MSU has responded to allegations fairly and reliably and that discrimination/harassment/other misconduct is not tolerated
	+ Education – convey expectations about university policy and community standards
* **What are the risks / potential negative consequences of the communication?**
	+ How might the communication impact a claimant?
		- *For RVSM/Title IX matters, consider seeking input of advocates and known claimants (through Center for Survivors for RVSM/Title IX cases)*
	+ How might the communication impact someone who has not yet come forward?
	+ How might the communication impact the respondent?
	+ How might the communication impact witnesses?
	+ For cases that are not yet concluded, how might the communication impact the investigation/resolution of the case?
	+ What are the legal/regulatory risks of disclosure (*e.g.* violation of federal or state law or University policy)?
* **What are the relevant privacy/confidentiality considerations?**
	+ *RVSM & Title IX Policy and ADP User’s Manual*: Information related to reports of discrimination, harassment, and retaliation reported to the Office for Civil Rights is generally shared only on a “need to know” basis.
	+ *Title IX Regulations:*  the identities of claimants, respondents, witnesses, and reporters must be kept confidential, *except* as permitted by FERPA, required by law, or to carry out the purposes of the Title IX regulations. 34 C.F.R. § 106.71(a). In addition, the University must maintain as confidential supportive measures provided to the complainant or respondent (except as required to provide the supportive measure). 34 C.F.R. § 106.30.
		- Disclosure is permitted where necessary to carry out the purposes of the Title IX regulations during the OIE/OCR process.
		- MSU OCR and the Review Team may consider whether disclosure to a broader audience is needed to implement remedies, address climate, or to stop or prevent harm.
		- If a FOIA request is made, disclosure may be required by Michigan’s Freedom of Information Act. Where privacy exemptions are applicable, disclosure may still be required if the public interest in disclosure of the information outweighs the individual’s privacy interest.
	+ *MSU Discipline and Dismissal of Tenured Faculty for Cause:* “All proceedings and records with regard to disciplinary action or dismissal for cause proceedings shall be kept confidential to the degree permitted by the law. The Board of Trustees will decide on a case by case basis whether action taken by the Board pursuant to the dismissal portion of this Policy will identify the affected faculty member by name.”
	+ *Federal and state law regarding medical and counseling records*: information acquired in the course of providing medical or mental health services may only be disclosed in certain limited circumstances (never in proactive communications)
	+ *Bullard Plawecki Right to Know Act*: in most circumstances, written notice will be provided to an employee before divulging disciplinary action to a third party and disciplinary action more than four years old will not be released to a third party.
	+ *FERPA*: prohibits the release of personally identifiable information from a student's education record without the student's prior written consent (with limited exceptions).
	+ *Law Enforcement Request*: where there is a simultaneous criminal investigation, law enforcement may request confidentiality and should be consulted prior to communication.
* **Who should be informed?**
	+ Who has been impacted by the conduct or investigation? (*e.g.* claimant, reporter, witnesses, other students or employees, college community, university community)
	+ Who may be impacted if the conduct does not stop?
	+ Who needs to be informed to ensure accountability, monitor, and prevent repeat behavior? (*e.g.* supervisor, unit leadership, OER/AHR, personnel file, others in unit, college, or university)
* **What should the communication include?**
	+ Information needed to accomplish the goals
	+ Campus and community resources
	+ Language that the communication is Internal Only and should not be shared
* **What should the communication NOT include?**
	+ Identifying information for anyone other than potentially the respondent or employee accused of misconduct.
		- Language must be reviewed carefully for any detail that may identify an individual or a supportive measure provided to any claimant or respondent (*e.g.* student status/major, year of conduct, claimant’s department of study or employment location of conduct)
	+ Confidential Information (as described above) to the extent no exception or justification for disclosure applies.
1. Many of the considerations listed below will also apply to any responsive or external communications. Though the process for preparing those communications may differ, University Communications and others preparing responsive or external communications should also seek to consult appropriate department/college/unit leaders; OCR; OFASA/OER; OGC; and Presidential Advisors on RVSM and review the considerations outlined in this document. [↑](#footnote-ref-1)