

# EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

|                                |                    |   |                                  |
|--------------------------------|--------------------|---|----------------------------------|
| <hr/>                          |                    | ) |                                  |
| <b>SPEECH FIRST, INC.,</b>     |                    | ) |                                  |
|                                |                    | ) |                                  |
|                                |                    | ) |                                  |
|                                | <b>Plaintiff,</b>  | ) |                                  |
|                                |                    | ) | Civil No. 4:18-cv-11451-LVP-EAS  |
| <b>v.</b>                      |                    | ) | Hon. Linda V. Parker             |
|                                |                    | ) | Mag. Judge Elizabeth A. Stafford |
| <b>MARK SCHLISSEL, et al.,</b> |                    | ) |                                  |
|                                |                    | ) |                                  |
|                                |                    | ) |                                  |
|                                | <b>Defendants.</b> | ) |                                  |
| <hr/>                          |                    | ) |                                  |

**DECLARATION OF ERIK WESSEL**

I, Erik Wessel, submit this declaration in connection with the above-captioned matter and in support of Defendants’ opposition to Plaintiff’s motion for a preliminary injunction.

1. I am the Director of the Office of Student Conflict Resolution (“OSCR”) at the University of Michigan, and have been in this role since June 29, 2015. My responsibilities include supervising OSCR staff, high-level case management, consulting with OSCR staff as needed, engaging with partners in other University units, and undertaking strategic and policy-related work on behalf of OSCR. Prior to joining the University of Michigan, I served as the Director of the Office of Student Conduct at Ferris State University for almost two years and also worked in the Student Conduct

Office at Penn State University while completing my doctoral work in Higher Education Administration with a cognate area of study in counselor education.

### **OSCR's Mission**

2. OSCR's vision is to encourage "[a] safe and scholarly community in which students navigate conflict in a peaceful, socially just, and self-reflexive manner." To meet this goal, OSCR "provides a variety of programs and services designed to support a safe, just and peaceful community, and to help Michigan students learn how to manage and resolve conflict peacefully." See <https://oscr.umich.edu/>, attached as Exhibit 1.

### **OSCR's Conflict Resolution Process**

3. Through the University's Statement of Student Rights and Responsibilities (the "Statement"), the University of Michigan community has assigned OSCR the responsibility of implementing, facilitating and overseeing a resolution process that is designed to provide a timely, just, and educational response to behavior that constitutes a violation under the Statement. As the Statement explains, "[t]he University considers the procedures for resolving disputes a part of its educational mission."

4. OSCR's resolution process is available for students, faculty, and staff members who have a conflict with a student. OSCR offers a variety of approaches, programs and services to support persons experiencing conflict.

5. OSCR assists with a wide variety of conflicts including interpersonal conflicts, conflicts within and between student groups, roommate or housemate

conflicts, conflicts involving harm committed against students (including harassment, stalking, assault, theft), conflicts involving alcohol and other drugs and even some conflicts with faculty or staff members.

6. At a high level, OSCR's resolution process takes two forms: (1) formal conflict resolution ("FCR") and (2) adaptable conflict resolution ("ACR").

### **Formal Conflict Resolution**

7. A University of Michigan community member can pursue FCR by filing a complaint against a student who is alleged to have violated the Statement. FCR is only available where there is an allegation of a Statement violation.

8. Upon receipt of a complaint, a Resolution Coordinator (OSCR staff member) is assigned to the matter and determines whether the information presented by the complainant forms a sufficient basis to substantiate the claim and move the matter forward to FCR. At the initial stages of the case or at any time thereafter, OSCR may dismiss a complaint if it reasonably believes that the complaint is unsupported by the available evidence, does not constitute a violation of the Statement or that the underlying grievance or problem is better resolved in a different manner (e.g., through ACR).

9. If a complaint is allowed to move forward, the respondent is sent a "notice of allegation letter" which advises the respondent that a member of the community has filed a complaint with OSCR alleging that the respondent violated the Statement. This

letter also schedules a time for an intake meeting with the Resolution Coordinator. At any meetings with OSCR, the respondent is entitled to have an advisor present.

10. FCR is only available for Statement violations, but not all Statement violations have to proceed through FCR. If both the complainant and the respondent are interested, they may attempt to resolve the situation through ACR. If the complaint continues through the FCR process, the respondent has two options: (1) to accept responsibility for the violations alleged in the complaint, or (2) to contest the complaint in an arbitration.

11. If a complaint proceeds to arbitration, the respondent may choose to have a Resolution Officer (a member of the UM faculty or staff, not an OSCR staff member) or a Student Resolution Panel arbitrate the dispute. Each party is allowed to be accompanied by a personal advisor, who may be an attorney, but the advisor may not participate directly in the hearing. The respondent and the complainant may present written reports, make opening and closing statements and call witnesses. During the hearing, the complainant, the respondent, the Resolution Officer and the Resolution Coordinator each have the right to question the complainant and the Resolution Coordinator. These participants may also question (1) the respondent, if the student chooses to participate and (2) any witnesses. At the conclusion of the arbitration, either the Resolution Officer or the Student Resolution Panel will determine if the totality of information presented constitutes clear and convincing evidence that the respondent is responsible for the violations in the complaint. If the student is found responsible for

Statement violations, the Resolution Officer or the Student Resolution Panel makes a recommendation on sanctions or interventions to the Dean of Students who can accept or modify the recommendation. Both the complainant and the respondent can appeal the decision within ten days by submitting an appeal in writing to the Resolution Coordinator.<sup>1</sup> Appeals are reviewed by an Appeals Board composed of one student appointed by Central Student Government, one faculty member appointed by the Faculty Senate and one administrator appointed by the President.

12. If a respondent accepts responsibility for a Statement violation or is found to have violated the Statement through arbitration, sanctions or interventions can be imposed. Sanctions vary, with common ones ranging from a written reflection to the completion of a substance abuse education workshop to a period of disciplinary probation or removal from University Housing. In addition to these educational measures, all acceptances or findings of responsibility result in a disciplinary record kept by OSCR for a period of seven years past the date of case closure.<sup>2</sup>

### **Adaptable Conflict Resolution**

13. If all persons personally and directly affected by the conflict agree to attempt resolution through ACR and the Resolution Coordinator believes that ACR is

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<sup>1</sup> The grounds for appeal are (1) proper procedures were not followed, (2) the evidence does not clearly support the findings, (3) the sanctions or interventions are insufficient or excessive relative to the violation, and (4) there is new evidence not reasonably available at the time of the hearing.

<sup>2</sup> Except in cases of suspension or expulsion where records may be kept indefinitely.

appropriate under the circumstances, then the Resolution Coordinator will arrange for the conflict to proceed to the chosen ACR pathway. ACR is available for a variety of conflicts and is not limited to allegations of Statement violations. Some conflicts, however, particularly those involving violence, are not appropriately resolved through ACR.

14. Through ACR, OSCR offers a spectrum of services, or resolution “pathways,” including conflict coaching, facilitated dialogue, social justice mediation, shuttle negotiation and restorative justice circles.

15. ACR services are free, confidential to the degree permitted by law, and *completely voluntary* for every party involved every step of the way. In fact, all parties are informed that they may elect to discontinue their participation and elect to utilize another pathway, including the FCR pathway at any stage of the process. When requested, the ACR facilitator will reach out to the student involved to invite them to participate in the ACR process, but there is no mechanism by which to require or otherwise compel participation.

16. Cases resolved through ACR do not result in a disciplinary record for the student involved.

### **Harassing and Bullying**

17. The Statement explains both “Student Rights” and “Student Responsibilities.” It is important to read them together and, in my experience, they are read in conjunction in the course of our work at OSCR.

18. Included in the Student Rights section of the Statement is the affirmation that “[s]tudents at the University have the same rights and protections under the Constitutions of the United States and the State of Michigan as other citizens . . . includ[ing] freedom of expression” and that “students have the right to express their own views.” The Statement notes that the tradition of free expression at the University “includes voicing unpopular views and dissent.”

19. Following the discussion of Student Rights and Student Responsibilities, the Statement sets forth a list of Violations, including a prohibition on “[h]arassing or bullying another person—physically, verbally, or through other means.” That provision is not designed to cover speech that is protected by the First Amendment, and it is not interpreted by OSCR as encompassing such speech. Indeed, to do so would make no sense and be inherently contradictory in the context of a Statement that affirms a student’s right to free expression.

20. If a complaint submitted to OSCR were to allege only behavior protected by the First Amendment, that complaint would not be allowed to move forward to FCR because the behavior alleged would not amount to a Statement violation.

21. To my knowledge, in the time I have served in this role, no student has ever been sanctioned under the harassing and bullying provision of the Statement on the basis of expressing controversial or unpopular opinions, or using humor, parody or satire in the treatment of sensitive topics.



22. I am familiar with the Complaint filed in this litigation and the allegations concerning Students A, B and C, including the views that they allegedly wish to express as described in paragraphs 85-130 of the Complaint. To my knowledge, no student has ever been sanctioned under the harassing and bullying provision of the Statement for expressing views like those held by Students A, B and C regarding such political or policy issues as gun rights, illegal immigration, abortion, welfare, affirmative action, gender identity, or gender equity. To do so would be contrary to the commitment to free expression stated in the Statement itself.

23. If a complaint were submitted that alleged that the respondent had expressed views like those held by Students A, B and C, the complaint would not be permitted to move forward to FCR. It would be dismissed.

24. In sum, I can assure Students A, B and C that they are free to engage in open and robust debate on any of the topics mentioned in the Complaint and to express any opinions or beliefs they have on those subjects, no matter how unpopular or offensive those opinions or beliefs may be, without any fear of a disciplinary proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 15, 2018

  
\_\_\_\_\_  
Erik Wessel

# EXHIBIT 1



STUDENT LIFE  
**OFFICE OF STUDENT CONFLICT RESOLUTION**  
UNIVERSITY OF MICHIGAN

- [Experiencing Conflict?](#)
- [Resolution Options](#)
- [Accessing Services](#)
- [Tips and Tools](#)
- [Get Involved](#)
- [Learn More About OSCR](#)

**Amendment Process Overview**

**Review the Current Statement**

**Submit a Proposal to Amend the Statement**

## Resolve Conflicts Peacefully

**The Office of Student Conflict Resolution will be closed on Friday, June 15, 2018.**

The Office of Student Conflict Resolution promotes a safe and scholarly community in which students navigate conflict in a peaceful, socially just, and self-reflexive manner. OSCR offers a spectrum of conflict resolution pathways that are educationally focused, student-driven, community owned, and restorative in nature, which are adaptable to meet the needs of individuals experiencing conflict.

### A Letter from E. Royster Harper Regarding the Statement of Student Rights and Responsibilities

"The University of Michigan—Ann Arbor (the University) is dedicated to supporting and maintaining a scholarly community.

### University Policies

- [Statement of Student Rights and Responsibilities](#)
- [University of Michigan Policy & Procedures on Student Sexual & Gender-Based Misconduct & Other Forms of Interpersonal Violence](#)

### Quick Links

As its central purpose, this community promotes intellectual inquiry through vigorous discourse. Values which undergird this purpose include civility, dignity, diversity, education, equality, freedom, honesty, and safety. When students choose to accept admission to the University, they accept the rights and responsibilities of membership in the University's academic and social community."



OSCR Staff with Planet Blue Certificate

## OSCR Receives Gold Certification by Planet Blue

The Office of Student Conflict Resolution (OSCR) recently achieved Gold level in [Planet Blue's Sustainable Workplace Certification Program](#). Encouraging "U-M staff and faculty to join in working towards a more sustainable university through participation," the Certification Program leads offices through the steps necessary to make sustainability a regular part of their practices.



## Tips for Resolving Academic Conflicts

Academic conflicts can be stressful and overwhelming for U of M students. It can be difficult to get these conflicts resolved independently while trying to keep up on reading, writing papers, and studying for exams. Fortunately, there are resources provided by OSCR that can help you resolve academic conflicts in a peaceful and socially just way. Some academic conflicts involve grade disputes with a professor. These can be challenging to experience on your own. OSCR does not handle grade disputes- these are handled by the [Office of the Ombuds](#).

[Student Life Response to Executive Orders](#)

[OSCR Blog](#)

[Forms](#)

[Responding to Allegations](#)

[Resources for Residence Education Staff](#)

[Ways to Resolve Conflict](#)

[Team OSCR](#)

## Background Checks

[Confidentiality Waiver & Student Records Request](#)

## Consultation & Workshop Requests

[Request for Conflict Resolution Services](#)

[Workshop Request](#)

## Follow & Friend

[@oscr\\_umich](#)  
[Office of Student Conflict Resolution](#)

University of Michigan



## Policy & Procedures on Student Sexual & Gender-Based Misconduct & Other Forms of Interpersonal Violence

The University of Michigan (University) supports its educational mission by fostering a community based on civility, dignity, diversity, inclusivity, education, equality, freedom, honesty, and safety. Consistent with these values, the University is committed to providing a safe and non-discriminatory learning, living, and working environment for all members of the University community. The University does not discriminate on the basis of sex or gender in any of its education or employment programs and activities.

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### Four Things to Keep in Mind during a Disagreement

Both you and the other person should be respectful and feel respected at all times during an argument. If you can feel the tension rising in the room (e.g. escalated voices, inappropriate language) use your words to bring attention to this. It might be more constructive to walk away and return to the issue at a later time.



100 Student Activities Building  
515 East Jefferson  
Ann Arbor, MI 48109-1316

- 9 AM - 5 PM, Mon. - Fri.
- (734) 936-6308

- [\(734\) 615-8826](tel:(734)615-8826)
- [oscr@umich.edu](mailto:oscr@umich.edu)
- [Map](#)

**MANY  
VOICES  
OUR  
MICHIGAN**



**M**  
DIVERSITY,  
EQUITY &  
INCLUSION

[OUR STRATEGIC PLAN FOR  
DIVERSITY, EQUITY & INCLUSION >>](#)

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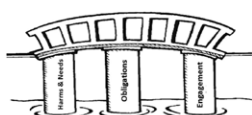


STUDENT LIFE  
**OFFICE OF STUDENT CONFLICT RESOLUTION**  
UNIVERSITY OF MICHIGAN

[Experiencing Conflict?](#) [Resolution Options](#) [Accessing Services](#) [Tips and Tools](#) [Get Involved](#) [Learn More About OSCR](#)

## About OSCR

OSCR provides a variety of programs and services designed to support a safe, just and peaceful community, and to help Michigan students learn how to manage and resolve conflict peacefully. OSCR offers a full-spectrum menu of conflict resolution pathways. These include Facilitated Dialogue, Restorative Justice Circles, Shuttle Negotiation, Social Justice Mediation, as well as the Formal Conflict Resolution process as described by the [Statement of Student Rights and Responsibilities](#). The Statement is a community-owned expression of Michigan's values that outline both the rights that U-M students enjoy as well as responsibilities they accept as members of this community. OSCR continually strives to Build Trust, Promote Justice, and Teach Peace.



## Restorative Justice Symposium & Dialogue

Tuesday, April 15, 2014

1:00-5:00 PM

Couzens Hall Multipurpose Room

[Event Photos](#)

## On This Topic

[Our Work](#)

[Team @ OSCR](#)

[Visit OSCR](#)

[Visit Us!](#)

## Visit Us!

The Office is located in the [Student Activities Building](#) on U-M's [Central Campus](#). The Jefferson Street entrance provides the closest access the OSCR. An accessible entrance (power doors/ramp) and elevators are located at the East entrance of SAB, off of Maynard Street. Once inside, proceed to the Lower Level. Our Office entrance will be on your right.

**The Office of Student Conflict Resolution**

100 Student Activities Building  
515 East Jefferson, Ann Arbor, MI, 48109  
Ann Arbor, MI 48109-1316  
Phone: 734-936-6308  
Fax: 734-615-8826

Hours of Operation:  
Monday - Friday 8-5 pm;  
Saturday - Sunday closed

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## Related Procedures to The Statement

This outline of related procedures respond to behaviors which are inconsistent with the values of the University community; and it suggests possible sanctions/interventions which are intended to educate and to safeguard members of the University community.

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## Sanctions and Interventions

Sanctions/interventions are designed to promote the University's educational mission. Sanctions/interventions 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](#).

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## Procedures

The University will use the following procedures to respond to behavior which goes against the values of the University community as defined in this *Statement*. 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. Persons who have questions about the *Statement* should contact the Resolution Coordinator (RC) who provides support to all participants.





515 East Jefferson  
Ann Arbor, MI 48109-1316

- 9 AM - 5 PM, Mon. - Fri.
- (734) 936-6308
- (734) 615-8826
- [oscr@umich.edu](mailto:oscr@umich.edu)
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