



VI-1.60(A) UNIVERSITY OF MARYLAND SEXUAL MISCONDUCT POLICY & PROCEDURES

(Approved on an interim basis by the President October 13, 2014, Amended May 4, 2015, Amended October 1, 2015)

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I. POLICY STATEMENT

Sexual misconduct is a form of sex discrimination prohibited by federal and state discrimination laws, including Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act. In addition, some forms of sexual misconduct violate the criminal laws of the State of Maryland. Sexual misconduct is also a form of sex discrimination in violation of the University of Maryland Non-Discrimination Policy and Procedures:

<http://www.president.umd.edu/policies/2014-VI-100b.html>. However, this Policy supersedes the “Non-Discrimination Policy and Procedures” with respect to matters of sexual misconduct. The University will respond to complaints of sexual misconduct in accordance with the provisions of the Sexual Misconduct Policy and accompanying investigation and adjudication procedures.

The Office of Civil Rights & Sexual Misconduct (OCRSM) shall receive notice of all reports of sexual misconduct received by any individual deemed a “Responsible University Employee” under this policy. No employee (other than law enforcement) is authorized to investigate or resolve reports of sexual misconduct without the involvement of the Title IX Officer:

Catherine A. Carroll, Director

Title IX Officer

Office of Civil Rights & Sexual Misconduct

University of Maryland

1103 Reckord Armory, College Park, MD 20742-5031

E-mail: carrollc@umd.edu | titleixcoordinator@umd.edu
Phone: 301-405-1142 | Cell/Text: 301-852-0946 | Fax: 301-405-2837
<http://www.umd.edu/ocrsm/>

Training

The Office of Civil Rights & Sexual Misconduct is responsible for overseeing the University's training and educational programs related to sexual misconduct. To learn more about various resources, on-going training initiatives, and education programs for students, faculty and staff, please consult the office's website for more current and up-to-date information.

The University of Maryland is committed to a working and learning environment free from sexual misconduct. Sexual misconduct is a broad term used to describe a range of behavior, including sexual harassment, sexual assault, domestic violence, dating violence, sexual violence, relationship violence, sexual exploitation, sexual intimidation, and stalking. Sexual misconduct will not be tolerated. It corrupts the integrity of the educational process and work environment, and violates the core mission and values of the University.

Creating an environment free from sexual misconduct is the responsibility of all members of the University community. The University is committed to fostering a campus climate free from sexual misconduct through training, education and prevention programs, and through policies and procedures that promote prompt reporting, prohibit retaliation, and promote timely, fair and impartial investigation and resolution of sexual misconduct cases. In responding to complaints of sexual misconduct, the University will take appropriate steps to eliminate sexual misconduct, prevent its recurrence and address its effects.

II. APPLICABILITY

This policy applies to all members of the University community, including students, faculty, and staff. It also applies to contractors and other third parties within the University's control. This policy applies to sexual misconduct:

- On University premises, in any University facility or on University property;
- At any University sponsored, recognized or approved program, visit or activity, regardless of location;
- That impedes equal access to any University education program or activity or that adversely impacts the education or employment of a member of the University community regardless of where the conduct occurred; or
- That otherwise threatens the health and/or safety of a member of the University community.

III. DEFINITIONS

“Coercion” includes conduct, intimidation, and express or implied threats of physical or emotional harm, that would reasonably place an individual in fear of immediate or future harm and that is employed to persuade or compel someone to engage in sexual contact. Examples of Coercion include causing the deliberate Incapacitation of another person; conditioning an

academic benefit or employment advantage on submission to the sexual contact; threatening to harm oneself if the other party does not engage in sexual contact; or threatening to disclose an individual's sexual orientation, gender identity, gender expression, or other personal sensitive information if the other party does not engage in the sexual contact.

“Complainant” refers to the individual who files a sexual misconduct complaint, alleging a violation of this Policy.

“Confidential” refers to communications between two parties where one party, based on their professional status, has the ability to ensure the communications between the two parties are legally protected as private.

“Consent” means a knowing, voluntary and affirmatively communicated willingness to participate in a particular sexual activity or behavior. Only a person who has the ability and capacity to exercise free will and make a rational, reasonable judgment can give consent. Consent may be expressed either by words and/or actions, as long as those words and/or actions create a mutually understandable agreement to engage in specific sexual activity. It is the responsibility of the person who wants to engage in sexual activity to ensure that he/she has consent from the other party, and that the other party is capable of providing consent.

- Lack of protest or resistance is not consent. Nor may silence, in and of itself, be interpreted as consent. For that reason, relying solely on non-verbal communication can lead to misunderstanding.
- Previous relationships, including past sexual relationships, do not imply consent to future sexual acts.
- Consent to one form of sexual activity cannot automatically imply consent to other forms of sexual activity.
- Consent must be present throughout sexual activity and may be withdrawn at any time. If there is confusion as to whether there is consent or whether prior consent has been withdrawn, it is essential that the participants stop the activity until the confusion is resolved.
- Consent cannot be obtained by use of physical force, threats, intimidating behavior, or coercion. Coercion is pressuring another person into sexual activity.

It is a violation of this policy to engage in sexual activity with someone you know, or should know, is incapacitated. Incapacitated, for purposes of this policy, means that the person's decision-making ability is impaired such that they lack the capacity to understand the “who, what, where, why or how” of their sexual interaction. Incapacitation may result from: sleep or unconsciousness, temporary or permanent mental or physical disability, involuntary physical restraint, or the influence of alcohol, drugs, medication, or other substances used to facilitate sexual misconduct.

“Incapacitated” An individual who is Incapacitated is unable to give Consent to sexual contact. States of Incapacitation include sleep, unconsciousness, intermittent consciousness, or any other state where the individual is unaware that Sexual Contact is occurring. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to Consent to

Sexual Contact. Alcohol or drug use is one of the prime causes of Incapacitation. Where alcohol or drug use is involved, Incapacitation is a state beyond intoxication, impairment in judgment, or “drunkenness.” Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is Incapacitated, and therefore unable to give Consent, requires an assessment of whether the consumption of alcohol or other drugs has rendered the individual physically helpless or substantially incapable of:

- Making decisions about the potential consequences of Sexual Contact;
- Appraising the nature of one’s own conduct;
- Communicating Consent to Sexual Contact; or
- Communicating unwillingness to engage in Sexual Contact.

“**Interim Protective Measures**” means reasonably available steps the University may take to protect the parties pending a University investigation and adjudication of sexual misconduct.

“**Respondent**” means the individual accused of engaging in Prohibited Conduct under this Policy.

“**Responsible University Employee**” includes any University administrator, supervisor, faculty member, campus police, coach, athletic trainer, resident assistant, or non-confidential first responder who has the authority to take action to redress sexual misconduct; or whom a student could reasonably believe has such authority or duty.

“**Title IX Officer**” refers to the individual designated by the President of the University to: 1) oversee the University’s response to sexual misconduct reports and complaints and identify and address any patterns or systemic problems revealed by such reports and complaints; 2) conduct sexual misconduct investigations; 3) oversee, review content, and, in collaboration with other University offices, conduct training for students, faculty, and staff on sexual misconduct issues; 4) ensure that appropriate policies and procedures are in place for responding to complaints of sexual misconduct against faculty, staff, and students; and 5) work with local law enforcement to ensure coordinated responses to sexual misconduct cases.

IV. PROHIBITED CONDUCT

“**Dating Violence**” encompasses a broad range of behaviors, including sexual assault, physical abuse and other forms of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant, considering the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved.

“**Domestic Violence**” encompasses a broad range of behaviors, including sexual assault, physical abuse and other forms of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant, or by any other

person against an adult or youth complainant protected from those acts by domestic or family violence laws of Maryland.

“Relationship Violence” encompasses a broad range of behaviors, including sexual assault, physical abuse and other acts, threats or a pattern of abusive behavior of a physical or sexual nature by one partner intended to control, intimidate, manipulate, humiliate, frighten, coerce, or injure the other. These acts may be directed toward a spouse, an ex-spouse (also referred to as “domestic violence”), or by a current or former intimate partner (also referred to as “dating violence”).

“Retaliation” means intimidating, threatening, coercing, or discriminating against an individual for the purpose of interfering with any right or privilege secured by law or University policy relating to sexual misconduct, or because an individual has made a report, filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding related to sexual misconduct. Retaliation includes retaliatory harassment.

“Sexual Assault” is any type of actual or attempted sexual contact with another individual without that person’s consent, including sexual intercourse (rape) and attempted sexual intercourse (attempted rape).

Sexual Assault I. – Non-Consensual Sexual Intercourse

Any act of sexual intercourse with another individual without consent (rape). This includes penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person’s consent.

Sexual Assault II. – Non-Consensual Sexual Contact

Any unwanted intentional touching of the intimate body parts of another person, causing another to touch the intimate parts of oneself or another, or disrobing or exposure of another without consent. Intimate parts may include genitalia, groin, breast, or buttocks, or clothing covering them, or any other body part (including one’s own) that is touched in a sexual manner. Non-consensual sexual contact includes attempted sexual intercourse without consent (attempted rape).

“Sexual Exploitation” means taking non-consensual or abusive sexual advantage of another person for one’s own advantage or benefit or for the advantage or benefit of anyone other than the person being exploited.

“Sexual Harassment” means: (a) unwelcome sexual advances; (b) unwelcome requests for sexual favors; or (c) other behavior of a sexual or gender-based nature where: (i) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, evaluation of academic work, or participation in a university-sponsored educational program or activity; (ii) submission to or rejection of such conduct by an individual is used as the basis for an academic, employment, or activity or program participation decision affecting that individual; or (iii) such conduct has the purpose or effect of unreasonably interfering with an individual’s academic or work performance, i.e., it is sufficiently severe or

pervasive to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment.

“Sexual Intimidation” means threatening behavior of a sexual nature directed at another person, such as threatening to sexually assault another person or engaging in indecent exposure.

“Sexual Misconduct” is an umbrella term that encompasses dating violence, domestic violence, sexual violence, sexual harassment, sexual assault, sexual exploitation, sexual intimidation, relationship violence, and stalking. Sexual misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can be committed by any person, regardless of gender identity, and can occur between people of the same or different sex, sexual orientation, or gender expression.

“Sexual Violence” means physical sexual acts perpetrated without consent. Sexual violence includes but is not limited to sexual harassment, sexual coercion, and sexual assault.

“Stalking” means repeated, unwanted attention; physical, verbal, or electronic contact; or any other course of conduct directed at an individual that is sufficiently serious to cause physical, emotional, or psychological fear or to create a hostile, intimidating, or abusive environment for a reasonable person in similar circumstances and with similar identities. Stalking may involve individuals who are known to one another or who have a current or previous relationship or may involve individuals who are strangers.

V. SANCTIONS

Both parties shall be informed of the outcome of any investigative and adjudicative process based on a violation of this policy. The University shall not publically disclose personally identifiable information about either of the parties, except as required by law.

Employees. Employees found in violation of this policy are subject to disciplinary action ranging from a written reprimand up to and including termination of employment, depending on the circumstances.

Students. Students found in violation of this policy are subject to disciplinary action based on the circumstances and nature of the violation. Sanctions include, but are not limited to: dismissal from the University (suspension or expulsion), removal from University housing, disciplinary probation, and other sanctions such as a community service and mandatory and continuing participation in sexual misconduct education programming.

Persons who commit sexual misconduct in violation of federal, state, or local law may also be subject to criminal charges and penalties.

VI. CONFIDENTIAL RESOURCES

Generally, it is not confidential when a person reports sexual misconduct. If a person desires to keep an incident of sexual misconduct confidential, they should speak with individuals who have

professional or legal obligations to keep communications confidential. When seeking advice and support, persons should always consider whether they want to discuss their concerns with a confidential resource. Unless there is an imminent threat to health or safety or other basis for disclosure, such as child abuse, confidentiality applies when persons seek services from the following resources:

Campus Advocates Respond and Educate (CARE) to Stop Violence

University Health Center Office 301-314-2222

24/7 Help Line (call/text) 301-741-3442

www.health.umd.edu/care or care@health.umd.edu

This service is a free and confidential resource that provides support, assistance and advocacy to any member of the University community impacted by sexual misconduct. Its mission is to respond to incidents of sexual misconduct, including sexual assault, relationship violence, stalking, and sexual harassment.

Faculty Staff Assistance Program (FSAP) 301-314-8170 or 301-314-8099

This program is a confidential assessment, referral, and counseling service staffed by trained mental health professionals. FSAP is available to all University of Maryland employees and their family members at no charge. Faculty and staff may consult with a counselor for many different reasons, including sexual misconduct.

University Counseling Center 301-314-7651

www.counseling.umd.edu

The University of Maryland Counseling Center provides comprehensive psychological and counseling services to meet the mental health and developmental needs of students and others in the campus community. Staffed by counseling and clinical psychologists, the Counseling Center offers a variety of services to help students, faculty, staff, and the community deal with issues concerning them.

University Health Center, Mental Health Service 301-314-8106

www.health.umd.edu/mentalhealth/services

The Mental Health Service is staffed by psychiatrists and licensed clinical social workers and offers confidential services including short-term psychotherapy, medication evaluations, and crisis intervention and group psychotherapy.

Student Legal Aid Office

Undergraduates 301-314-7756; Graduate Students 301-405-5807

The Student Legal Aid Office, located in South Campus Dining Hall, provides free, confidential legal advice to any University student.

Campus Chaplains 301-405-8450 or 301-314-9866

http://thestamp.umd.edu/engagement/memorial_chapel/chaplains

The Campus Chaplains represent 14 faith communities and work collectively to serve the spiritual needs of all members of the University community.

Prince George's Hospital Domestic Violence and Sexual Assault Center

301-618-3154 - 24 hours (3001 Hospital Drive, Cheverly, MD 20785)

Persons who experience sexual assault can access a Sexual Assault Forensic Exam (SAFE) within 72 hours of an assault. Each Maryland County has a hospital that provides SAFE exams. A SAFE exam is available at Prince George's Hospital Center. To find a SAFE provider in other counties call 1-800-656-4653. SAFE exams and attention to medical needs are available without having to reveal a person's identity to the police.

Maryland Coalition Against Sexual Assault (MCASA)

Statewide Sexual Assault Information and Referral help line 1-800-983-RAPE

MCASA is a statewide coalition of 17 rape crisis and recovery centers that serve all of Maryland's jurisdictions. MCASA works to help prevent sexual assault, advocate for accessible, compassionate care for survivors of sexual violence, and works to hold offenders accountable.

Maryland Network against Domestic Violence

1-800-MD-HELPS

The Maryland Network Against Domestic Violence is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence. The Network accomplishes this goal by providing education, training resources, and advocacy to advance victim safety and abuser accountability.

Disclosures or reports made to any other entities except those listed above are *not* confidential. For instance, if you discuss an incident of sexual misconduct with your supervisor, a resident assistant, a coach, or faculty member, those persons are "Responsible University Employees" and, as such, are obligated pursuant to this policy to report the sexual misconduct to the Title IX Officer.

The University recognizes that sexual misconduct is a sensitive issue for all parties involved and is committed to operating with discretion, and maintaining the privacy of individuals to the greatest extent possible under applicable law.

VII. REPORTING SEXUAL MISCONDUCT

Obligations of "Responsible University Employee." A "Responsible University Employee" (see Definitions) must promptly notify the Title IX Officer in the Office of Civil Rights & Sexual Misconduct of any report of sexual misconduct brought to their attention, including campus law enforcement. The Title IX Officer works collaboratively with the reporting entity, making every effort to operate with discretion and maintain the privacy of the individuals involved.

Prompt reporting is encouraged. Persons are encouraged to report sexual misconduct promptly in order to maximize the University's ability to obtain evidence, identify potential witnesses, and conduct a thorough, prompt, and impartial investigation. While there are no time limits to reporting sexual misconduct, if too much time has passed since the incident occurred, the delay may result in loss of relevant evidence and witness testimony, impairing the University's ability to respond and take appropriate action.

All reports of sexual misconduct will be responded to immediately and appropriate action will be taken in accordance with the University's Sexual Misconduct Investigation & Adjudication Procedures (see *Appendices A, B, C*). If the University determines that sexual misconduct has occurred, it will take prompt and effective steps to eliminate the sexual misconduct, prevent its recurrence, and address its effects.

The University strives to take appropriate action, including investigation and resolution of complaints within sixty (60) calendar days from when the complaint was filed. The University may extend the time frames set forth in this policy for good cause, with written notice to both parties of the delay and the reason for the delay. Exceptions to this timeframe may vary depending on the complexity of the investigation, access to relevant parties, and the severity and extent of the misconduct.

Sexual misconduct by students, faculty, staff, and third parties should be reported to:

Office of Civil Rights & Sexual Misconduct 301-405-1142

<http://www.umd.edu/ocrsm/> | titleixcoordinator@umd.edu

The mission of the Office of Civil Rights & Sexual Misconduct is to support the University's commitment to a working and learning environment free from sexual misconduct and relationship violence. The core services of the Office include: oversight for all institutional responses to sexual misconduct and relationship violence, ensuring University compliance with federal statutory and regulatory requirements, promoting best practices in responding to victims of sexual violence and holding respondents accountable, receiving and investigating reports of sexual misconduct and relationship violence, and increasing access to information and available resources to the campus community. The office seeks to work collaboratively across all campus constituent groups and create a climate where diversity, inclusion, and respect inform all processes.

Sexual misconduct committed by students may also be reported to:

Office of Student Conduct, Division of Student Affairs 301-314-8204

www.studentconduct.umd.edu | studentconduct@umd.edu

The Office of Student Conduct administers adjudicative processes involving students who commit violations of the University of Maryland Code of Student Conduct and can provide assistance to students who wish to report incidents of sexual misconduct.

Office of Rights and Responsibilities, Department of Resident Life 301-314-7598

www.reslife.umd.edu/rights | drl-rr@umd.edu

The Office of Rights and Responsibilities administers adjudicative processes involving students who commit conduct violations of the Residence Hall Rules and the University of Maryland Code of Student Conduct in on-campus residence halls and can provide assistance to students who wish to report incidents of sexual misconduct.

Reporting a crime. Sexual misconduct, particularly sexual violence, may be a crime. The University will assist complainants who wish to report sexual misconduct to law enforcement authorities, including campus police. Representatives of the Office of Civil Rights & Sexual Misconduct, Office of Student Conduct, Office of Rights & Responsibilities, and Campus Advocates Respond and Educate (CARE) to Stop Violence Office in the University Health

Center are available to assist students in reporting to campus police. Campus police will also assist complainants in notifying other law enforcement authorities in other jurisdictions, as appropriate. To report to the University of Maryland Police, please call 301-405-3555.

Because the standards for a violation of criminal law are different from the standards for a violation of this policy, criminal investigations and proceedings are not determinative of whether a violation of this policy has occurred. In other words, conduct may violate this policy even if law enforcement agencies or local prosecutors decline to prosecute. Complaints of sexual misconduct and related internal University processes may occur prior to, concurrent with, or following criminal proceedings off campus.

Upon receipt of a report of sexual misconduct that may constitute a crime, campus police will advise the student that in addition to making a criminal report, they also have the right to file a complaint with the University and engage the University's investigation and adjudicative processes under this policy. In addition, as Responsible University Employees under this policy, campus police who receive any type of report of sexual misconduct, whether it rises to the level of a crime or not, shall promptly notify the Title IX Officer at titleixcoordinator@umd.edu.

Co-Occurring Criminal Action. Proceeding with a University investigation and adjudication of a complaint of sexual misconduct under this policy is independent of any criminal investigation or proceeding. Reporting to law enforcement does not preclude a person from proceeding with a complaint of sexual misconduct under this policy. The University is required to conduct an investigation in a timely manner, which means, in most cases, the University will not wait until a criminal investigation or proceeding is concluded before conducting its own investigation, implementing interim protective measures, and taking appropriate action. However, *at the request of law enforcement*, the Title IX Officer may defer its fact gathering until the initial stages of a criminal investigation are complete. If such a request is made, University of Maryland Police will submit the request in writing and the complainant will be notified. In addition, when possible, in cases where there is a co-occurring criminal investigation by University of Maryland Police, Prince George's County Police, or the local prosecutor's office, the Office of Civil Rights & Sexual Misconduct will work collaboratively and supportively with each respective agency within the parameters outlined above. The Office of Civil Rights & Sexual Misconduct will communicate any necessary delays in the University's investigative process to both parties in the event of a deferral.

The Office of Civil Rights & Sexual Misconduct shall not disclose information about sexual misconduct complaints to third parties (persons other than those in the University community with a need to know) except as may be required or permitted by federal or state law. If a report of sexual misconduct discloses a serious and on-going threat to the campus community, the University of Maryland Police may issue a timely warning of the conduct under the Clery Act in the interests of the health and safety of the campus community. This notice will not contain any personally identifying information related to the complainant.

Amnesty for Students Who Report Sexual Misconduct

The University recognizes that a student who is under the influence of alcohol and/or drugs at the time of an incident may be hesitant to make a report of sexual misconduct because of the threat of disciplinary sanctions for his or her own violation of the University of Maryland Code of

Student Conduct (i.e., alcohol or drug use violation). In this context, a student who reports sexual misconduct, either as a complainant or third party witness, will not face disciplinary charges under the University of Maryland Code of Student Conduct in accordance with V-1.00(J) *University of Maryland Policy on Promoting Responsible Action in Medical Emergencies* at <http://www.president.umd.edu/policies/2014-V-100j.html>.

Requests for Confidentiality

If a complainant requests that their name not be disclosed or that the University not investigate or take action against the respondent, the Title IX Officer or designee will determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, faculty, and staff, including the complainant. The Title IX Officer shall make a determination as to whether the complainant's request can be honored, by considering the following factors:

- Circumstances that suggest there is an increased risk of the respondent committing additional acts of sexual misconduct or other violence (e.g., whether there have been other sexual misconduct complaints about the same respondent);
- Whether the respondent has any documented history of violence known to the University;
- Whether the respondent threatened further sexual misconduct or other violence against the complainant or others that is known to the University;
- Whether the sexual misconduct was committed by multiple persons;
- Whether the sexual misconduct was perpetrated with a weapon;
- The age of the complainant subjected to the sexual misconduct; and
- Whether the University possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

VIII. INTERIM PROTECTIVE MEASURES

Reports of sexual misconduct in violation of this policy may require immediate protective measures to protect the safety and well-being of the parties and/or the campus community pending the outcome of the investigative and adjudicative processes. Interim protective measures may include the following:

No Contact Order. A no contact order is an official University directive that serves as notice to an individual that they must not have verbal, electronic, written, or third party communications with another individual.

For Students:

- *Academic accommodations*, such as, assistance in transferring to another section of a lecture or laboratory, assistance in arranging for incompletes, leaves or withdrawal from campus, or rearranging class schedules, and
- *Housing accommodations*, such as, facilitating changes in on-campus housing location to alternate housing, assistance in exploring alternative housing off-campus, and
- *Employment accommodations*, such as, arranging for alternate University employment, different work shifts, etc., and

- *Transportation and parking accommodations.*

For Employees:

- *Employment accommodations*, such as, temporary assignment, if appropriate, to other work duties and responsibilities, or other work locations, or other work groups/teams or alternative supervision/management, and
- *Transportation and parking accommodations.*

IX. RETALIATION

Complaints of Retaliation. Individuals who engage in retaliatory behavior against a reporting party or party participating in an investigation are in violation of this policy and will be subject to appropriate disciplinary action pursuant to the procedures for this policy. Individuals who believe they have experienced retaliation in violation of this policy should immediately report such conduct to the Title IX Officer at titleixcoordinator@umd.edu.

X. COMPLAINT PROCEDURES

Complaints Against Students. Complaints against students based on a violation of this policy will be reviewed in accordance with the procedures set forth in *Appendix A*.

Complaints Against Staff. Complaints against staff based on a violation of this policy will be reviewed in accordance with the procedures set forth in *Appendix B*.

Complaints Against Faculty. Complaints against faculty members based on a violation of this policy will be reviewed in accordance with the procedures set forth in *Appendix C*.

Complaints Against Third Parties Not Affiliated With the University. If a member of the University community (student, faculty, or staff) is subjected to sexual misconduct by a third party not affiliated with the University on University premises or during University sponsored activities, the matter should be reported to the Title IX Officer. The matter may be referred to law enforcement with a request that a formal letter be issued to the third party denying access to the University's buildings or grounds for acting in a manner that disrupts or disturbs the normal educational functions of the institution. The University is authorized to deny campus access to a third party engaged in disruptive behaviors under Maryland State law (see Sections 26-101 and 26-102, Education Article, Annotated Code of Maryland).

XI. STEPS TO TAKE FOLLOWING A SEXUAL ASSAULT

Stay Warm. Persons who experience sexual assault may be in a state of shock. It is important to stay warm by wrapping up in a blanket or coat. This will help recovery from shock and make it less likely that physical evidence is disturbed.

Get to a Safe Place and Seek Emotional Support. Talking with a trusted friend or relative or someone who is professionally trained to deal with sexual assault like a confidential CARE advocate or mental health professional at the University Health Center can help you make

decisions about what to do. Whether you decide to go to law enforcement or not, it is important to take care of your own emotional needs. Professional counseling may be beneficial.

Preserve Evidence. If possible, consider taking steps to preserve physical evidence - on the body and at the location of an assault. It is important not to shower or bathe, eat or drink, brush teeth or gargle, change clothes, urinate or defecate, brush or comb hair, or smoke. Clothing worn at the time of an assault should not be washed but placed in a paper bag “as is” and brought to the hospital. In order to avoid forgetting important details, write down the facts about the accused and the assault.

Seek Medical Attention. It is important to seek medical attention as soon as possible. A medical examination will ensure appropriate medical treatment, including testing for pregnancy or sexually transmitted infections. You may also want to obtain a Sexual Assault Forensic Exam (SAFE). A SAFE exam allows for the collection of evidence and can ensure any physical evidence is preserved in the event of a report to law enforcement. A SAFE exam may be obtained within 72 hours after an assault at:

Prince George’s Hospital Domestic Violence and Sexual Assault Center (DV/SAC)
301-618-3154
<http://www.dimensionshealth.org/index.php/dimensions-healthcare-facilities/prince-georges-hospital-center/domestic-violence-and-sexual-assault-center-dvsac/>

XII. CAMPUS SAFETY

The health and safety of all members of the campus community are the University’s primary concern. The University makes the following services available:

Emergency Phones

University of Maryland Police Emergency Response Telephones (PERT), recognized by a blue light affixed to each station, are available throughout campus. By activating the phone, an individual will be automatically connected to a campus police dispatcher who is immediately alerted to the location of the phone.

24 Hour Walking Escort Service/Student Police Auxiliary Foot Patrol **301-405-3555 or blue light emergency PERT phone**

The University of Maryland Police Department provides a walking escort service 24 hours a day for anyone who feels unsafe while walking on campus. The walking escorts are conducted by the Student Police Auxiliary foot patrol program. University of Maryland Police officers will provide walking escorts when the foot patrol program is out of service or if requested and available.

University Department of Public Safety

301-405-3555 (non-emergency) or 301-405-3333 (emergency)
Local Police in ANY location - 911

Persons who experience sexual misconduct are strongly encouraged to contact the University of Maryland Police. If a person is not certain whether criminal conduct is involved, an officer can assist in determining whether a crime has occurred. If sexual misconduct occurred off campus,

an officer can assist in contacting the appropriate law enforcement agency. A student can request and receive the assistance of campus police without making a criminal complaint. Campus police can also assist in accompanying the student to a hospital that can provide a Sexual Assault Forensic Exam (SAFE) to both ensure appropriate medical treatment and the timely collection of physical evidence in the event the person seeks to make a criminal complaint.

XIII. CONSENSUAL RELATIONSHIPS AND PROFESSIONAL CONDUCT

Sexual relationships that occur in the context of educational or employment supervision and evaluation present potential conflicts of interest. Relationships in which one party maintains a supervisory or evaluative responsibility over the other also reflect an imbalance of power, leading to doubt as to whether such relationships are truly consensual. For these reasons, the University *strongly* discourages such relationships.

Because of the potential conflicts of interest, persons involved in consensual sexual relationships with anyone over whom they have supervisory and/or evaluative responsibilities *must inform their supervisor(s)* of the relationship(s). Supervisory or evaluative responsibilities may be reassigned, as appropriate. While no relationships are expressly prohibited by this policy, failure to self-report such relationships in a timely manner, as required by this policy, may result in disciplinary action.

XIV. GOVERNMENT AGENCIES THAT ADDRESS COMPLAINTS OF SEXUAL MISCONDUCT

Complaints of sexual misconduct may also be filed with:

Equal Employment Opportunity Commission

City Crescent Building
10 S. Howard Street, Third Floor
Baltimore, MD 21201
Phone: 1-800-669-4000
Fax: 410-962-4270
TTY: 1-800-669-6820
Website: <https://egov.eeoc.gov/eas/>

Maryland Commission on Civil Rights

William Donald Schaefer Tower
6 Saint Paul Street, Ninth Floor
Baltimore, MD 21202-1631
Phone: 410-767-8600
Fax: 410-333-1841
TTY: 410-333-1737
Website: <http://mccr.maryland.gov/>
E-mail: jcole@mccr.state.md.us

It is important to note that in order to protect the legal rights and remedies available to a complainant, a complainant must comply with certain time limits and deadlines. Affected persons should contact the relevant agencies to verify the time limits. Failure to meet required deadlines may result in a loss of rights to seek a legal remedy.

Complaints involving violations of Title IX in the State of Maryland should be directed to:

Office for Civil Rights

U.S. Department of Education

The Wanamaker Building

100 Penn Square East, Suite 515

Philadelphia, PA 19107-3323

Phone: 215-656-8541

Fax: 215-656-8605

TDD: 800-877-8339

E-mail: OCR.Philadelphia@ed.gov

Website: http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html

Replacement for:

VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment

VI-1.30(A) University of Maryland Procedures on Sexual Assault and Misconduct

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I. OVERVIEW

These procedures accompany the University of Maryland (UMD) Sexual Misconduct Policy (the Policy) and are to be used when the University receives complaints of sexual misconduct involving UMD students. As defined in the Policy, sexual misconduct is an umbrella term that encompasses dating violence, domestic violence, sexual violence, sexual harassment, sexual assault, sexual exploitation, sexual intimidation, relationship violence, and stalking.

Both the Complainant and Respondent may decline to participate in the complaint process. The Title IX Officer and Director of Student Conduct, as appropriate, will determine whether the Investigation and Resolution Phase will proceed without the parties' participation. A lack of participation by a party does not necessarily preclude a finding of a Policy violation or the imposition of appropriate disciplinary action.

A. Role of the Support Person and Advisor

Throughout the process, any party may be accompanied to any meeting related to investigation and resolution of a complaint by no more than two (2) other people. Meetings include but are not limited to the following: investigative interviews, document review, meetings with the Office of Student Conduct (OSC), and the Standing Review Committee (SRC) Conference. Persons may serve in the role of Support Person or Attorney or Non-Attorney Advisor (Advisor) subject to the following limitations:

Support Person: A Complainant or Respondent may choose to be assisted by a Support Person of their choice, at their own initiation and expense. A Support Person is someone who can provide emotional, logistical, or other kinds of assistance. The Support Person cannot be a witness or provide statements in the case. The Support Person is a non-participant who is present to assist a Complainant or Respondent by taking notes, providing emotional support and reassurance, organizing documentation, or consulting directly with the party in a way that does not disrupt or cause any delay. All Support Persons must follow the non-party participation requirements outlined below.

Advisor: A Complainant or Respondent may choose to be assisted by an Advisor of their choice, at their own initiation and expense. The Advisor is a non-participant who is present to provide advice and consultation to the Complainant or Respondent in private. An Advisor cannot be a witness or provide statements in the case. If necessary, a party may request a recess in order to speak privately with an Advisor. An Advisor shall not be an active participant. The Complainant or Respondent must speak for him or herself. A Complainant or Respondent's Advisor may not delay, or otherwise interfere with the University's administrative process for student

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complaints. Advisors must follow the non-party participation requirements outlined below.

It is each party's decision whether and how they choose to engage a Support Person or Advisor. Throughout the process, University staff and participants, including but not limited to the Office of Civil Rights and Sexual Misconduct (OCRSM) and the OSC, will communicate and correspond directly with each party, and not through a Support Person or Advisor.

Party(s) Obligations: When the Complainant and/or Respondent wishes to have a Support Person and/or Advisor accompany them to a meeting, the individual parties (students) must notify the OSC or the OCRSM *at least 2 business days in advance* of their participation.

Non-Party Participation Requirements: All Support Persons and/or Advisors must contact the OSC or the OCRSM prior to participation in any meeting or other activity associated with these procedures. This is to ensure the non-party participants are informed about the process and their respective role(s). All participants must understand the expectations of their roles, privacy considerations, and the expected and appropriate decorum. The advance notice to the OSC or the OCRSM of the individual(s) who will accompany the Complainant and Respondent is designed to ensure that the University has sufficient time to make adequate arrangements, when necessary.

B. Time Frame for Resolution

Consistent with the goal of maximizing educational opportunities and campus safety while minimizing the possible disruptive nature of the investigation and resolution of the complaint, the OCRSM and the OSC seek to resolve all complaints within sixty (60) business days of the commencement of an investigation. In general, the investigation phase may last up to a month (4 -5 weeks) and the resolution phase will take approximately another month (or approximately 4 – 5 weeks). Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with the importance of resolving complaints in a timely and expeditious manner.

The Title IX Officer may extend the general time frames for the completion of required actions. If such an extension occurs, the Parties will be notified in writing by OCRSM or OSC. For example, time frames may be extended as necessary by the Title IX Officer to ensure the integrity and completeness of the Investigation, comply with a request by external law enforcement, accommodate the availability of witnesses, accommodate reasonable requests for delay by the parties, account for University breaks or vacations, to account for complexities in the case (including a large number of witnesses, events or quantity of information) or for other legitimate reasons.

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C. References

Reference herein to the Office of Student Conduct (OSC) includes the Office of Rights & Responsibilities, Resident Life, the Director of Student Conduct, and the Assistant Director of Resident Life, Office of Rights and Responsibilities, and their designees.

Reference herein to the OCRSM or the Title IX Officer includes the Director of the OCRSM and designees.

II. FILING A COMPLAINT

A complaint of sexual misconduct against a student may be filed with:

- The Office of Civil Rights & Sexual Misconduct (OCRSM)
- The Office of Student Conduct (OSC) or
- The Department of Resident Life, Office of Rights and Responsibilities (R&R).

Prompt reporting of Prohibited Conduct is encouraged so that the University can take immediate and corrective action to eliminate the misconduct, prevent its recurrence, and address its effects. The University will provide support and assistance to the Complainant and respond according to the steps outlined in these procedures. Upon receipt of any report the Title IX Officer will make an immediate assessment of the risk of harm to the parties or to the campus community and will take steps necessary to address any risks. These steps may include contacting the OSC to facilitate Interim Protective Measures that provide for the safety of the parties and the campus community when appropriate.

The University recognizes that deciding whether to file a complaint with the OCRSM and choosing how to proceed are personal decisions and that those decisions may evolve over time. A Complainant may file a report of sexual misconduct without triggering the complaint process; a Complainant does not have to decide how to proceed immediately. The OCRSM and the OSC will coordinate to provide support and assistance to each Complainant in making these important decisions. Consistent with the goal of safety for all community members, the University will make every effort to respect a Complainant's autonomy in making his/her own personal determination. In addition to, or independent of, filing a complaint with OCRSM, OSC or R&R, a Complainant has the right to file a report of sexual misconduct with campus police or external law enforcement at any time.

A. Notification to Complainant

Upon receipt of a complaint, the OCRSM will ensure that the Complainant is provided with a copy of the Sexual Misconduct Policy and procedures, and a *Notice of Rights & Responsibilities*.

Notice of Rights & Responsibilities

Either OSC or OCRSM will provide information to the Complainant about the University's internal, administrative complaint process and review with them their

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respective rights and responsibilities. The Complainant will be informed of available community and campus resources and services; his/her right to a Support Person and the Support Person's role; his/her right to an Advisor and the Advisor's role; his/her right to file a police report, or not; and the University's prohibition against retaliation. The Complainant will have an opportunity to ask questions and seek additional information.

B. Initial Assessment of Complaint

When the Complainant makes a formal complaint, the OCRSM will conduct an Initial Assessment. The Initial Assessment will determine whether the reported conduct constitutes a potential violation of the Policy, and if further action is warranted based on the reported conduct. The first step in the Initial Assessment is a preliminary meeting between the Complainant and the OCRSM and/or OSC to gather facts that will enable the OCRSM, in consultation with other offices, as appropriate, to:

- Assess the nature and circumstances reported in the complaint, including the severity of the conduct;
- Assess the safety of the Complainant and of the campus community;
- Assess for pattern evidence or other similar conduct by the Respondent;
- Assess the Complainant's expressed preference regarding resolution, including any request that no further action be taken;
- Assess any request by the Complainant for confidentiality or anonymity;
- Assess the reported conduct for possible referral to UMPD for a timely warning under the Clery Act.

C. Requests for Confidentiality

Where possible, the OCRSM will seek action consistent with the Complainant's expressed wishes. The University's ability to fully investigate and respond to a complaint may be limited if the Complainant requests that his/her name not be disclosed to the Respondent or declines to participate in an Investigation. When a Complainant requests his/her name or other identifiable information not be disclosed and/or that no further action be taken, the Title IX Officer will seek to honor such requests, balancing the Complainant's wishes for confidentiality with the University's obligation to provide a safe and non-discriminatory environment for all members of the University community.

At the conclusion of the Initial Assessment, the OCRSM will determine the appropriate next step:

- Take no further action,
- Proceed with Administrative Resolution, or
- Initiate an Investigation.

D. Interim Protective Measures

Based on the nature and circumstances of the complaint, the Director of Student Conduct

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or the Title IX Officer, may authorize Interim Protective Measures to ensure the safety and well-being of the Complainant and others in the campus community, as appropriate. Information about Interim Protective Measures can be found on *page 11* of the Policy.

E. Notification to Respondent

When the Initial Assessment determines the University has no jurisdiction over the Respondent (i.e., he/she is not a member of the UMD community) and a remedy can be provided to help mitigate the effects of the sex discrimination, the OSC or the OCRSM will facilitate that remedy, as appropriate. When the Initial Assessment determines the University has jurisdiction over the Respondent, and an investigation is warranted, the OSC or the OCRSM will notify the Respondent and provide him/her with a *Notice of Rights and Responsibilities*.

Notice of Rights and Responsibilities

The OSC or the OCRSM will meet with the Respondent and provide him/her with a copy of the policy and procedures. At that meeting, the Respondent will be informed verbally and in writing of the following:

- The nature of the complaint;
- The issuance of a no contact order (and provided a copy, if applicable);
- Available community and campus resources and services;
- The right to a Support Person and his/her role;
- The right to an Advisor and his/her role;
- The University's prohibition against retaliation; and
- Information about the investigation and resolution phases of the complaint process.

III. ADMINISTRATIVE RESOLUTION

A. Eligibility

Administrative Resolution is not appropriate for complaints involving sexual violence, including sexual assault. When requested by the Complainant, the OCRSM will determine if a complaint is appropriate for Administrative Resolution. Administrative Resolution allows for the provision of remedies that focus on supporting the Complainant. Depending on the type of remedy sought, the use of Administrative Resolution may allow the Complainant to maintain anonymity. A Complainant or Respondent may opt out of Administrative Resolution at any time. In that event, the case would be assessed for further investigation and/or possible referral for an SRC Conference.

In cases where Administrative Resolution is requested, and OCRSM and OSC conclude it is an appropriate response, (based on the factors outlined in the Initial Assessment) and is mutually agreed to by the Parties, the OSC Director or designee will take appropriate action by imposing individual and community remedies designed to maximize the

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Complainant's access to employment, educational, and extracurricular opportunities and benefits at the University, and to address the affects of the discriminatory conduct and prevent its re-occurrence through a range of potential disciplinary actions.

B. Disciplinary Action

These actions are limited to those that do not impact the student's status and include, but are not limited to:

Educational Requirements. Completion of projects, programs, or requirements designed to help the student manage behavior and understand why it is inappropriate.

"No Contact" Orders. Compliance with orders of no contact that limit access to specific University areas or forms of contact with particular persons.

Housing Restrictions. Exclusion from University housing or change in housing arrangements.

Community Service. The OSC will monitor completion of up to sixty (60) hours of community service over a period not to exceed twelve (12) weeks under guidelines established by OCRSM in consultation with the OSC.

Disciplinary Reprimand. The student is warned that further misconduct may result in more severe disciplinary action.

Disciplinary Probation. The student shall not represent the University in any extracurricular activity or run for or hold office in any student group or organization. Additional restrictions or conditions may also be imposed. Notification will be sent to appropriate University offices, including the Office of Campus Programs.

Failure to comply with any of the disciplinary action listed above may result in further sanctions that could impact a student's status with the University.

C. Records

To assess pattern or systemic behavior fairly, the OCRSM will maintain records of all complaints and conduct referred for Administrative Resolution. Information disclosed during the Administrative Resolution process may be considered during a subsequent Investigation or conduct of a similar nature involving either or both parties, as may be relevant and determined by the Title IX Officer of Director of Student Conduct. The time frame for completion of Administrative Resolution may vary, but the OCRSM and OSC will seek to complete the process within a month (or approximately 30 business days) from the date of the Complainant's request.

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III. SEXUAL MISCONDUCT INVESTIGATION

Following the Initial Assessment, and in consultation with the Complainant, if Administrative Resolution is not an option, the OCRSM will initiate a prompt, thorough, and impartial Investigation of the complaint. The OCRSM will designate a Special Investigator, specifically trained in performing sexual misconduct investigations. The Special Investigator is responsible for coordinating the gathering of information about what occurred and making an investigative finding as to whether the conduct constitutes a violation of the Policy. The finding by the Special Investigator shall be based on a preponderance of the evidence. A preponderance of the evidence means that it is more likely than not that the Prohibited Conduct in violation of the Policy occurred.

Information gathered during the Investigation will be used to evaluate the appropriate course of action, provide for individual and campus safety, and identify the need for Protective Measures and other remedies as necessary to eliminate the alleged conduct and to address its affects.

A. Notice of Investigation

When an investigation is initiated, the OSC or OCRSM will send the Complainant and the Respondent a written *Notice of Investigation*. The *Notice of Investigation* will contain a summary of the alleged misconduct, and the range of potential sanctions. Where appropriate, the *Notice of Investigation* will also contain notification that expulsion and/or suspension are potential sanctions. Upon receipt of the *Notice of Investigation*, or at any other stage in the process, the Respondent may choose to accept responsibility for the Policy violation. Once the *Notice of Investigation* has been delivered to the parties, the Investigation phase begins.

B. Meeting with Office of Student Conduct

Upon receipt of the *Notice of Investigation*, the Respondent and Complainant are required separately to meet in person with the OSC. The OSC will review the rights and responsibilities of each party under the procedures and answer any questions the parties may have about the process.

C. Investigation Overview

The OCRSM will oversee the Investigation. The Investigation is designed to provide a fair and reliable gathering of the facts. All individuals, including the Complainant, the Respondent, and any third-party witnesses, will be treated with appropriate sensitivity and respect throughout the Investigation. The Special Investigator will safeguard the privacy of the individuals involved in a manner consistent with federal and state law and University policy.

During the Investigation, the Complainant and Respondent will have an equal opportunity to be heard, to submit information, and to identify witnesses who may have relevant information. The Special Investigator will speak separately with the

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Complainant, the Respondent, and any other individuals who are willing to participate and have information relevant to the investigation. The Special Investigator may gather or receive information that is relevant to the complaint, including physical or documentary evidence, such as prior statements, written communications between the parties, email messages, social media materials, text messages, and other available records.

D. Investigation Phase Timeframe

The OCRSM seeks to conclude the Investigation within thirty (30) business days from the issuance of the *Notice of Investigation*. Any extension of the timeframes, and the reason for the extension, will be shared with the parties in writing. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with the importance of resolving complaints in a timely and expeditious manner.

E. Intersection with Criminal Case

Where the OCRSM is made aware that there is a concurrent criminal investigation, the Special Investigator will coordinate with outside and campus law enforcement so that any University processes do not interfere with the integrity or the timing of a law enforcement investigation. At the request of law enforcement, the Title IX Officer may agree to defer the fact-finding portion of its Investigation until after the initial stages of a criminal investigation. The Title IX Officer will communicate with the parties regarding resources and accommodations, procedural options, anticipated timing, and the implementation of any necessary Interim Protective Measures for the safety and well-being of all affected individuals.

The Special Investigator will promptly resume fact gathering as soon as law enforcement has released the case for University review following the initial criminal investigation. All community members, including students, faculty and other University employees, are expected to cooperate with the OCRSM Special Investigator in the Investigation, to assure fairness and procedural due process. The Title IX Officer may request the appearance of persons from the University community who can provide substantial, relevant evidence.

F. Special Considerations

The Special Investigator has discretion to determine whether any witness or other evidence is relevant to the finding of a Policy violation. The Special Investigator may exclude information that is irrelevant, immaterial, or more prejudicial than probative from the final Investigative Report. The Special Investigator may also exclude statements of personal opinion by witnesses and statements as to general reputation for any character trait, including honesty.

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The Special Investigator will not exclude direct observations or reasonable inferences drawn from the facts. Other information will be considered as outlined below:

Pattern Evidence. The Special Investigator may consider information (when known) about prior allegations of sexual misconduct by either party if the prior or pending incident(s) are substantially similar to the present incident and/or is indicative of a pattern of behavior.

Prior Sexual History between the Parties. Where there was a prior or ongoing relationship between the Complainant and the Respondent, and the Respondent asserts that Consent was sought and given, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of the Policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute Consent.

Consolidation of Reports. At the discretion of the OCRSM, multiple reports may be consolidated in one Investigation if the information related to each incident would be relevant and probative in reaching a determination on the other incident(s). This includes matters where the determination has been made that there is relevant Pattern Evidence or where the evidence of the other conduct is inextricably intertwined with Prohibited Conduct under the Policy. Matters may be consolidated where they involve multiple Complainants, multiple Respondents, or related conduct involving the same parties (provided that it does not delay the prompt resolution of conduct under the Policy).

G. Opportunity to Review and Comment on Draft Investigation Report

At the conclusion of the investigation phase, the Special Investigator will prepare a written draft Investigation Report that summarizes the information gathered, synthesizes the areas of agreement and disagreement between the parties and attaches all supporting information, evidence and witness statements relied upon in the investigation. Before the Investigation Report is finalized, the Complainant and Respondent will be given the opportunity to review a draft of the Investigation Report.

The Complainant and Respondent will receive a *Notice of Opportunity to Review Draft Investigation Report*. Within five (5) business days of the date of the *Notice of the Opportunity to Review Draft Investigation Report*, the parties may submit additional comments; ask questions, or present clarifying or new information to the Special Investigator.

If one of the parties cannot be physically present to review and comment on the draft report, the OCRSM will work with the student to identify a mutually agreed upon third person who can read the report over the phone or by Skype to the party. Draft Investigation reports shall not be shared electronically.

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H. OCRSM Investigative Finding

Upon timely receipt of any additional information from the Complainant and Respondent or after the five (5) business day comment period has lapsed without comment, the Special Investigator will finalize the Investigation Report. The final Investigation Report will state whether the preponderance of the evidence supports a Policy violation and include a summary of the evidence relied upon by the Special Investigator in reaching this determination. In reaching this determination, the Special Investigator will consult with the Title IX Officer. The Special Investigator may also seek information regarding the parties' prior disciplinary history and prior criminal history.

IV. CHARGING

A. Review by the Office of Student Conduct

The OSC will review the Investigation Report, attachments and any responses to the Investigation Report submitted by the Parties and make an independent determination as to whether the preponderance of the evidence supports a finding of a Policy violation or not. In the event OSC deems it necessary, OSC may request further investigation by the Special Investigator.

B. Notice of Policy Violation and Formal Charges

If OSC determines that a preponderance of the evidence supports the finding of a Policy violation, OSC will issue a *Notice of Policy Violation and Formal Charges (Charging Notice)* document to the Respondent and Complainant. The *Charging Notice* will describe the specific sexual misconduct in violation of the Policy, and OSC's determination based on the Investigation Report. If OSC determines that the preponderance of evidence does not support the finding of a Policy violation, OSC will issue a *Notice of No Policy Violation (Outcome Notice)*. The *Outcome Notice* will describe how the finding is not supported by the preponderance of the evidence relative to the specific type of sexual misconduct in the complainant.

In either case, upon receipt of either a *Charging Notice* or *Outcome Notice*, both parties will be contacted and directed to meet separately with the Director of OSC at a formal *Outcome Conference* to discuss next steps in the process.

C. Outcome Conference

At the *Outcome Conference*, the Parties may either accept or reject the finding. Both Parties meet separately with the Director of Student Conduct or designee. When either Party does not agree with the finding issued by the OCRSM and the OSC, they may request additional review by the Senate Committee on Student Conduct (SCC), excluding cases with a possible sanction of expulsion or suspension. The SCC review and outcome is the final outcome. Where there has been a finding of a Policy violation, and the possible sanction is expulsion or suspension, the case will be automatically referred to the

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Standing Review Committee (SRC).

At the end of the meeting, the Director of Student Conduct or designee will communicate the next steps in the process depending on the Parties' respective options. If the case is going to an SRC Conference, both parties will be informed by the OSC, of the date and time of the SRC conference.

D. Opportunity for Parties to Submit Response to Final Investigation Report

At the conclusion of the *Outcome Conference*, both Parties will be provided with a redacted copy of the Investigation Report (including exhibits). At that time, both parties are allowed five (5) business days to submit a written response to the Investigation Report to OSC. If no responses are received in the allotted time period, or if a Party fails to attend the *Outcome Conference*, OSC may proceed with the SRC Conference, or Administrative Determination and exclude any written responses not provided in a timely manner as outlined above. All submitted written responses will be shared with the other party, and the SRC members, prior to the SRC conference.

E. Administrative Determination

Generally, for cases where expulsion or suspension is not a potential sanction, the Office of Student Conduct will determine the appropriate disciplinary action. In doing so, OSC will consider the criteria outlined at VI. Sanctions and Remedies, section B. Sanction Considerations, on *page 14* of this document. The OSC will also consider impact statements provided by the parties.

F. Standing Review Committee (SRC)

Cases in which expulsion or suspension is a potential sanction are automatically referred to the Standing Review Committee (SRC). The OSC will convene the SRC. The purpose of the SRC Conference is to allow for an independent assessment of whether the preponderance of the evidence supports a finding of a Policy violation. The SRC is a body composed of a combination of five (5) staff, faculty, and students who have received training or experience to serve in this capacity. SRC members are obligated to disclose any conflicts or if any of the parties may be known to them, to the OSC, prior to participation in any SRC. Conflicts or familiarity with the parties disclosed to the OSC will automatically disqualify the SRC member from participation on a specific case.

An SRC Chair will be designated to facilitate and manage the SRC conference. The SRC Chair will be specifically trained on the obligations and responsibilities of serving as Chair.

G. SRC Conference Procedures

The SRC Conference is closed to members of the public other than the Parties, Support Persons and/or Advisors, SRC members and other appropriate University personnel. The

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Advisor or Support Person is not permitted to participate in the process and may not directly address the SRC, other parties, or the Special Investigator at any time.

Role of Special Investigator: The Conference will begin with brief introductions and the SRC Chair will invite the Special Investigator to summarize the Investigation and explain his/her analysis supporting the finding of a Policy violation. The Parties, including their respective Support Persons and Advisors, may be present. The SRC may pose questions directly to the Special Investigator about the investigation. When the SRC has concluded questioning the Special Investigator, the Chair will invite the Complainant and Respondent to submit questions to the Chair to be asked of the Special Investigator. Questions presented by either of the Parties to the Special Investigator, must be submitted in writing.

Questions Presented during the Conference: If the Investigator cannot answer a question (posed by either party or the SRC itself) to the satisfaction of the SRC, the SRC may suspend the case for further investigation by the Special Investigator. Once the Special Investigator has concluded any further investigation, the SRC Conference will be rescheduled. OSC will use best efforts to complete this process promptly, and will notify the parties of the status, as appropriate.

The SRC will determine what submitted questions are posed to the Special Investigator, and state the basis for their decision, retaining discretion regarding relevancy and redundancy. If either party has any follow up or clarifying question(s) resulting from the Special Investigator's response to a question, the follow up question also must be submitted in writing.

When all questioning is concluded, the Special Investigator will be excused. Afterwards the SRC will discuss the case and make a determination, based on majority vote, about the finding, called the *SRC Decision*.

H. Notice of SRC Decision

The SRC will issue a *Notice of SRC Decision* that includes the finding by the SRC as to whether there is a Policy violation, its rationale, and a brief summary of the evidence relied upon in making the decision. The *Notice of SRC Decision* will be sent by the OSC to the parties within five (5) business days with a request that the parties provide written *Impact Statements* within three (3) business days to OSC for consideration prior to the issuance of sanctions. If *Impact Statements* are not provided verbally or in writing to OSC within the allotted time period, OSC will impose sanctions without the benefit of the *Impact Statement(s)*.

Impact Statement. The Director of OSC will review and consider *Impact Statements* before imposing sanction(s). An *Impact Statement* is an opportunity for a party to provide more personal information about how the incident has impacted them.

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VI. REMEDIES & SANCTIONS

A. Remedies

The Title IX Officer or designee in consultation with the OSC will identify reasonable short-term and long-term or permanent remedies to address the effects of the conduct on the Complainant, restore the Complainant's safety and well-being, and maximize the Complainant's educational and employment opportunities. Such remedies seek to restore to the Complainant, to the extent possible and within reason, the benefits and opportunities lost as a result of the Prohibited Conduct. The Title IX Officer may also identify remedies to address the effects of the conduct on the larger University community. Remedies include but are not limited to:

Supportive measures such as: extended classwork deadline, or flexible deadlines, change of venue for taking an exam, change in exam date or retaking of an exam.

Academic accommodations such as: retro-active drop from a particular class, retro-active withdrawal from a semester, policy exemption requests, and tuition reimbursement.

Additional remedies such as: no contact orders, housing accommodations, schedule changes, counseling and referral to outside agencies.

B. Sanction Considerations

The imposition of sanctions is designed to eliminate Prohibited Conduct under the Policy, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and federal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components such as removal from University housing, removal from specific courses or activities, and disciplinary probation. Some behavior, however, is so egregious in nature, harmful to the individuals involved, or so deleterious to the educational process that it requires severe sanctions, including suspension or expulsion from the University.

The Director of Student Conduct or designee is responsible for determining the appropriate sanction in every sexual misconduct case. In reaching this determination, the OSC will consider the following:

- The nature and violence of the conduct at issue;
- The impact of the conduct on the Complainant;
- The impact or implications of the conduct on the community and/or the University;
- Prior misconduct by the Respondent, including the Respondent's relevant prior discipline history, both at the University or elsewhere, including criminal convictions;
- Respondent's acceptance of responsibility for the conduct;

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- Maintenance of a safe and respectful environment conducive to learning;
- Protection of the campus community and the University; and,
- Any other mitigating, aggravating, or compelling circumstances to reach a just and appropriate resolution in each case.

Where the Director of Student Conduct or designee concludes that a sanction(s) of expulsion or suspension is appropriate, and the Respondent has not already been suspended on an interim basis, there will be an immediate assessment by the Director of Student Conduct or designee to determine whether the Respondent poses a serious threat of disruption to the academic process or a continuing danger to other members of the University community or University property. The Director of Student Conduct or designee may impose interim suspension pending the conclusion of any Appeal. Where the sanction is other than expulsion or suspension, the imposition of sanction(s) will be deferred pending the conclusion of any Appeal. Protective Measures in effect will continue pending the conclusion of any Appeal. Sanctions may include, but are not limited to:

Educational Requirements. Completion of projects, programs, or requirements designed to help the student manage behavior and understand why it is inappropriate.

“No Contact” Orders. Compliance with orders of no contact that limit access to specific University areas or forms of contact with particular persons.

Housing Restrictions. Exclusion from University housing or change in housing arrangements.

Community Service. The OSC will monitor completion of up to sixty (60) hours of community service over a period not to exceed twelve (12) weeks under guidelines established by OCRSM in consultation with the OSC.

Disciplinary Reprimand. The student is warned that further misconduct may result in more severe disciplinary action.

Disciplinary Probation. The student shall not represent the University in any extracurricular activity or run for or hold office in any student group or organization. Additional restrictions or conditions may also be imposed. Notification will be sent to appropriate University offices, including the Office of Campus Programs.

Suspension. The student is separated from the University for a specified period of time. Permanent notification will appear on the student’s transcript. The student shall not participate in any University-sponsored activity and may be barred from University premises. Suspended time will not count against any time limits of the Graduate School for completion of a degree. (Suspension requires administrative review and approval by the Vice President for Student Affairs and may be altered, deferred or withheld).

APPENDIX A: STUDENT SEXUAL MISCONDUCT COMPLAINT PROCEDURES

Expulsion. The student is permanently separated from the University. Notification will appear on the student's transcript. The student will also be barred from the University premises. (Expulsion requires administrative review and approval by the President and may be altered, deferred or withheld).

C. Notice of Sanction

Upon reaching a sanction determination, the OSC will issue a *Notice of Sanction* to both parties and require each party attend an in-person meeting with OSC. At the meeting, OSC will provide the *Notice of Sanction* and the *Notice of Right to Appeal* to both parties.

D. Effect of Withdrawal and Records of Student Discipline

The existence of a pending investigation or resolution under the Policy will be noted on a student's transcript. In addition, currently active sanctions of expulsion or suspension will be noted on a student's transcript. In the event that a Respondent chooses to withdraw from the University prior to the resolution of disciplinary charges under the Policy, or where the Respondent declines to participate in proceedings under the Policy, the University will continue to process the disciplinary charges in the student's absence and without his/her participation. When a Respondent withdraws prior to the resolution of pending disciplinary charges, the Respondent is ineligible to return to the University until the disciplinary proceedings under the Policy have been resolved. In the event the student graduates while an investigation and resolution is pending, issuance of the student's diploma will be suspended. In some cases, academic transcripts may be withheld until the matter is resolved or marked "Disciplinary Action Pending."

VII. APPEAL

The Complainant and Respondent may appeal the *Notice of Sanction*. Mere dissatisfaction with the sanction is not a valid basis for appeal. The appeal must be submitted in writing within five (5) business days of receipt of the *Notice of Sanction*. The scope of the appeal is limited to the grounds stated below. If an appeal is received by the OSC, the other party will be notified and given five (5) business days to respond. Responses shall be submitted directly to the OSC. Appeals filed by each party will be considered together in one appeal review process. Receipt of the written appeal will be acknowledged in writing.

A. Grounds for Appeal

Grounds for appeal shall be limited to:

Procedural Error. The decision was significantly affected by the failure of the University to take a procedural step or to fulfill a procedural requirement. Mere deviations from procedures that did not significantly affect the outcome will not be a basis for sustaining an appeal.

APPENDIX A: STUDENT SEXUAL MISCONDUCT COMPLAINT PROCEDURES

New Evidence. New and significant relevant information has become available which could not have been discovered during the Investigation phase or before OSC issued a *Notice of Policy Violation and Formal Charges*.

Sanction is Substantially Disproportionate to the Offense. The sanction is substantially disproportionate to the facts of the particular Policy violation. This basis for appeal is limited to cases involving sanctions of expulsion and suspension.

If neither party submits an appeal, the *Notice of Sanction* will become final after five (5) business days. Appeals submitted after five (5) business days shall be denied.

B. Considerations

Appeals are not intended to allow for a second review of the facts of the case and whether there was a Policy violation. A review of the matter will be prompt and narrowly tailored to the stated grounds for appeal. In most cases, appeals are confined to a review of the written record and the pertinent documentation regarding the grounds for appeal.

New Evidence. When the basis of the Appeal is new evidence, the OSC will consult with the Special Investigator, and the SRC Chair that facilitated the Conference in the case, and make a determination as to whether: 1) the information submitted is actually new evidence, and 2) that it was not available at the time of the investigation phase or before the issuance of the *Charging Notice*. If it is determined to not be new evidence, the appeal will be denied. If it is new evidence, the new evidence will be investigated and considered by the OCRSM, the OSC and the original SRC Conference members to determine whether it changes the respective Finding made by each entity.

C. Appellate Body

The University Senate Student Conduct Committee (SCC) is the designated Appellate Body for all cases involving sexual misconduct. The SCC is composed of three (3) members from the Senate Committee who have had no previous involvement with the case. The Appellate Body may accept, reject or modify the sanction. The SCC Appellate Body Chair will render a written decision on the appeal to the OSC within fifteen (15) business days from the date of the submission of all appeal documents. Appeal decisions by the SCC Appellate Body are final with the exception of cases involving expulsion or suspension that allow for further review (*see* page 15-16, above).

IX. FINAL OUTCOME

After all review processes are concluded, the OSC or the OCRSM will promptly notify the Complainant and Respondent, in writing, and in person when possible, by issuing a *Notice of Final Outcome* of the sexual misconduct complaint.

APPENDIX A: STUDENT SEXUAL MISCONDUCT COMPLAINT PROCEDURES

A. Post-Resolution Follow Up

After a sanction or remedy is issued, if the Complainant agrees, the OCRSM or the OSC may periodically contact the Complainant to ensure the Prohibited Conduct has ended and to determine if additional remedies are necessary; and will contact the Respondent to assure compliance with any sanctions that have been imposed. The Complainant may decline future contact at any time. Any violation by a Respondent of a sanction or protective measure imposed under the Policy or a failure by a University employee to provide a specified remedy should be reported to the Title IX Officer. The Complainant and Respondent are encouraged to provide the OCRSM with feedback about their experience with the process and recommendations regarding ways to improve the effectiveness of the campus's implementation of the Policy.

APPENDIX B: STAFF SEXUAL MISCONDUCT COMPLAINT PROCEDURES

I. INTRODUCTION

These procedures accompany the University of Maryland (UMD) Sexual Misconduct Policy (“the Policy”) and are to be used when complaints of sexual misconduct are filed against UMD staff. These procedures replace all procedures previously in effect pertaining to the investigation and resolution of sexual misconduct complaints against staff at the University of Maryland. For purposes of the Policy and these Procedures, staff include University coaches and all University employees other than those with faculty rank as described in II-1.00(A) University of Maryland Policy on Appointment, Promotion, and Tenure of Faculty at <http://www.president.umd.edu/policies/2014-ii-100a.html>. Employees with faculty rank are governed by the Faculty Sexual Misconduct Complaint Procedures (*see Appendix C*).

Note: Reports by Responsible University Employees (RUEs) of sexual misconduct made to the Office of Civil Rights & Sexual Misconduct (OCRSM) DO NOT constitute a formal complaint. An individual must file a formal complaint in order for the complaint process to ensue. The University, through the OCRSM, retains the right to initiate the formal complaint process independent of any formal complaint filed by an individual.

II. FILING A COMPLAINT

Complaints of sexual misconduct should be made to the Office of Civil Rights & Sexual Misconduct (OCRSM). Upon filing a complaint, the Complainant will receive a *Notice of Rights & Responsibilities*.

A. Initial Assessment

Upon receipt of a complaint, OCRSM will conduct an Initial Assessment to determine whether the complaint may constitute a potential Policy violation, and whether any immediate action is warranted based on the reported conduct. The Initial Assessment will consider:

- The nature and circumstances of the allegation, including the severity and duration of the conduct;
- The safety of the Complainant and others in the campus community;
- Pattern evidence or other similar conduct by the Respondent; and
- The Complainant’s expressed preference regarding resolution.

Following the Initial Assessment, the Title IX Officer will determine whether to proceed with an investigation, take no action, or refer the report to other campus units, including but not limited to the Staff Ombudsperson, for appropriate action because the complaint does not rise to Prohibited Conduct under the Policy. The Title IX Officer will notify the Complainant of the results of the Initial Assessment.

APPENDIX B: STAFF SEXUAL MISCONDUCT COMPLAINT PROCEDURES

B. Interim Protective Measures

Based on the nature and circumstances of the complaint, the Title IX Officer may take immediate and appropriate steps to eliminate sexual misconduct in violation of the Policy, address its affects, and prevent its recurrence. As appropriate, and on a need-to-know basis only, Interim Protective Measures will be made in consultation with the appropriate supervisor or unit head/administrator(s) and/or Assistant Vice President of University Human Resources.

III. SEXUAL MISCONDUCT INVESTIGATION

Following the Initial Assessment, and in consultation with the Complainant, the OCRSM may initiate an investigation if the conduct constitutes a potential violation of the Policy. A Special Investigator will be assigned to conduct the investigation.

A. Notice of Investigation

In the event of an investigation, OCRSM will send a written *Notice of Investigation and Notice of Rights and Responsibilities* to both parties. The *Notice of Investigation* will contain a summary of the allegation(s) at issue. Once a Notice of Investigation has been delivered to the parties, OCRSM will begin its Investigation.

The Investigation is designed to provide an impartial, prompt and fair gathering of the facts. All individuals, including the Complainant, the Respondent, and any third party witnesses, will be treated with appropriate sensitivity and respect throughout the Investigation. At all times the OCRSM seeks to safeguard the privacy of the individuals involved in a manner consistent with federal and state law and University policy.

B. Investigation

During the Investigation, the Complainant and Respondent will each have an opportunity to be heard, submit information, and identify witnesses who may have relevant information. The Special Investigator will speak separately with the Complainant, the Respondent, and any other individuals who have information relevant to the investigation. The Special Investigator may gather or receive information that is relevant to the determination of an appropriate sanction or remedy, including information about the impact of the alleged incident on the parties. The Special Investigator will also gather any available physical or documentary evidence, including prior statements by the parties or witnesses, communications between the parties, email messages, social media materials, text messages, and other records as appropriate and available.

C. Notice of Opportunity to Review Investigation Report

At the conclusion of the Investigation, the Special Investigator will draft a written report that summarizes the information gathered, synthesizes the areas of agreement and disagreement between the parties and includes relevant written documentation gathered

APPENDIX B: STAFF SEXUAL MISCONDUCT COMPLAINT PROCEDURES

in the course of the investigation. The parties will be issued a written *Notice of Opportunity to Review the Investigation Report*. The Complainant and Respondent will each have an opportunity to review the draft Investigation Report and supporting evidence, and submit written comments on the accuracy of their statements, pose questions and submit additional information or evidence. Additional comments or information must be provided to the Special Investigator within five (5) business days of the date of the *Notice of Opportunity to Review the Investigation Report*. If further investigation is warranted based on information provided during the review period, the Special Investigator will continue the investigation until all relevant information and evidence is gathered.

D. Investigation Outcome – Finding

When the review period has ended, and the investigation is complete, the Special Investigator will finalize the Investigation Report, taking into account any additional information provided, and issue a Finding in consultation with the Title IX Officer. All information relied on by the Special Investigator shall be included in the final Investigation Report. The final Investigation Report will state whether the preponderance of the evidence supports a Policy violation, or not, and include a summary of the evidence relied on by the Special Investigator in reaching this determination. A preponderance of evidence means it is more likely than not a Policy violation occurred.

E. Notice of Finding of Policy Violation

Both parties will be informed, separately, in writing, as to whether or not the investigation resulted in a finding of a policy violation.

IV. DISCIPLINARY ACTION

Upon receipt of the final Investigation Report and Finding, the relevant Supervisor/Unit head, in consultation with the next level administrator(s), and/or Assistant Vice President, Human Resources or designee and the Title IX Officer, will determine appropriate disciplinary action, if any.

Notice of Disciplinary Action

In the event disciplinary action is to be imposed, the Supervisor/Unit head and/or Assistant Vice President, Human Resources or designee, as appropriate, will issue notice of the disciplinary action.

Disciplinary action will depend on the specific circumstances in each case and may include sanctions ranging from written reprimand up to and including termination of employment. Other administrative and/or non-disciplinary remedies may also be imposed, such as no contact directives, change in work duties, and change in work locations or work schedules.

APPENDIX B: STAFF SEXUAL MISCONDUCT COMPLAINT PROCEDURES

To determine what type of disciplinary action is most appropriate (administrative or other remedies) the relevant Supervisor/Unit head and/or Assistant Vice President, Human Resources or designee, as appropriate, in consultation with the Title IX Officer, shall consider the following:

- The nature of the misconduct at issue;
- The impact of the misconduct on the Complainant;
- The impact or implications of the misconduct on the community or the University;
- Any prior sexual misconduct by the Respondent at the University or elsewhere that is known to the University;
- Respondent's prior disciplinary history at the University; and
- Any other mitigating, aggravating, or compelling circumstances.

Discipline shall be imposed in accordance with all procedural due process rights afforded employees based on their status in accordance with University policy and Maryland State law.

V. GRIEVANCE RIGHTS

Employees may grieve disciplinary action in accordance with the rights afforded to them based on their specific employee status.

A. Exempt Employees

If warranted, regular exempt employees found to have violated the Policy may be terminated pursuant to VII-1.22 Policy on Separation for Regular Exempt Employees at <http://www.president.umd.edu/policies/2014-VII-122.html> either under *Section III Termination by Period of Notice* or under *Section IV Termination for Cause*. Regular exempt employees may grieve any disciplinary action pursuant to VII-8.00 USM Policy on Grievances for Exempt and Nonexempt Staff Employees at <http://www.usmh.usmd.edu/regents/bylaws/SectionVII/VII800.html> or VII-8.10 USM Policy on Special Action Appeals for Classified Employees at <http://www.usmh.usmd.edu/regents/bylaws/SectionVII/VII810.html>, as applicable.

B. Nonexempt Employees

If warranted, regular nonexempt employees found to have violated the Policy may be terminated in accordance with VII-8.10 Policy on Special Action Appeals for Classified Employees at <http://www.usmh.usmd.edu/regents/bylaws/SectionVII/VII810.html>. Regular nonexempt employees may grieve any disciplinary action pursuant to VII-8.00 USM Policy on Grievances for Exempt and Nonexempt Staff Employees at <http://www.usmh.usmd.edu/regents/bylaws/SectionVII/VII800.html> or VII-8.10 USM Policy on Special Action Appeals for Classified Employees at <http://www.usmh.usmd.edu/regents/bylaws/SectionVII/VII810.html>, as applicable.

APPENDIX B: STAFF SEXUAL MISCONDUCT COMPLAINT PROCEDURES

C. Contingent I and II Employees

Contingent employees found to have violated the Policy may be terminated in accordance with the terms of their contract. Contingent employees do not have formal grievance rights. However, any dispute regarding termination may be brought to the attention of the employee's supervisor or department head, or alternatively, may be brought to the attention of the University Human Resources-Office of Staff Relations.

D. Staff with Vested Status

Associate Staff, Classified-Exempt, and employees with a Librarian job title employed at the time of implementation of Phase II-USM Exempt Pay Program (January 2, 2000) shall have grievance rights according to Sections III and IV of VII-9.01 USM Policy on Implementation of Phase II-Exempt of the USM Pay Program at <http://www.usmh.usmd.edu/regents/bylaws/SectionVII/VII901.html>.

VI. FINAL OUTCOME

After the completion of all review and/or grievance processes initiated by either party, the Title IX Officer will promptly notify the Complainant of any modification of the final outcome, except as prohibited by State or Federal law.

Records Retention

The OCRSM shall maintain investigation and outcome records in accordance with the University's record retention schedule.

The Respondent's Human Resources department or Unit Head, the OCRSM, and University Human Resources shall maintain records of any discipline, administrative, and/or other remedies in accordance with the University's record retention schedule and standard University protocols regarding the retention of personnel records.

APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

I. INTRODUCTION

These procedures accompany the University of Maryland Sexual Misconduct Policy and are to be used when responding to, investigating and adjudicating complaints of sexual misconduct against UMD faculty. Faculty include all University employees with faculty rank as described in II-1.00(A) University of Maryland Policy on Appointment, Promotion and Tenure of Faculty at <http://www.president.umd.edu/policies/2014-ii-100a.html>. These procedures replace all procedures previously in effect pertaining to the investigation and adjudication of sexual misconduct against faculty at the University of Maryland, College Park. For purposes of this Policy and Procedures, coaches are deemed staff and are governed by the Staff Sexual Misconduct Complaint Procedures (*See Appendix B*).

Note: Reports by Responsible University Employees (RUEs) of sexual misconduct made to the Office of Civil Rights & Sexual Misconduct (OCRSM) DO NOT constitute a formal complaint. An individual must file a formal complaint in order for the complaint process to ensue. The University, through the OCRSM, retains the right to initiate the formal complaint process independent of any formal complaint filed by an individual.

II. FILING A COMPLAINT

Complaints of sexual misconduct should be made to the Office of Civil Rights & Sexual Misconduct (OCRSM). Upon filing a complaint, the Complainant will receive a *Notice of Rights & Responsibilities*.

A. Initial Assessment

Upon receipt of a complaint, OCRSM will conduct an Initial Assessment to determine whether the complaint may constitute a potential Policy violation, and whether any immediate action is warranted based on the reported conduct. The Initial Assessment will consider:

- The nature and circumstances of the allegation, including the severity and duration of the conduct;
- The safety of the Complainant and others in the campus community;
- Pattern evidence or other similar conduct by the Respondent; and
- The Complainant's expressed preference regarding resolution.

Following the Initial Assessment, the Title IX Officer will determine whether to proceed with an investigation, take no action, or refer the report to other campus units, including but not limited to the Faculty Ombudsperson, for appropriate action because the complaint does not rise to Prohibited Conduct under the Policy. The Title IX Officer will notify the Complainant of the results of the Initial Assessment.

APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

B. Interim Protective Measures

Based on the nature and circumstances of the complaint, the Title IX Officer may take immediate and appropriate steps to eliminate sexual misconduct in violation of the Policy, address its affects, and prevent its recurrence. As appropriate, and on a need-to-know basis only, Interim Protective Measures will be made in consultation with the appropriate supervisor or unit head/administrator(s) and/or Associate Provost for Faculty Affairs.

III. SEXUAL MISCONDUCT INVESTIGATION

Following the Initial Assessment, and in consultation with the Complainant, the OCRSM may initiate an investigation if the conduct constitutes a potential violation of the Policy. A Special Investigator will be assigned to conduct the investigation.

A. Notice of Investigation

In the event of an investigation, OCRSM will send a written *Notice of Investigation and Notice of Rights and Responsibilities* to both parties. The *Notice of Investigation* will contain a summary of the allegation(s) at issue. Once a Notice of Investigation has been delivered to the parties, OCRSM will begin its Investigation.

The Investigation is designed to provide an impartial, prompt and fair gathering of the facts. All individuals, including the Complainant, the Respondent, and any third party witnesses, will be treated with appropriate sensitivity and respect throughout the Investigation. At all times the OCRSM seeks to safeguard the privacy of the individuals involved in a manner consistent with federal and state law and University policy.

B. Investigation

During the Investigation, the Complainant and Respondent will each have an opportunity to be heard, submit information, and identify witnesses who may have relevant information. The Special Investigator will speak separately with the Complainant, the Respondent, and any other individuals who have information relevant to the investigation. The Special Investigator may gather or receive information that is relevant to the determination of an appropriate sanction or remedy, including information about the impact of the alleged incident on the parties. The Special Investigator will also gather any available physical or documentary evidence, including prior statements by the parties or witnesses, communications between the parties, email messages, social media materials, text messages, and other records as appropriate and available.

C. Notice of Opportunity to Review Investigation Report

At the conclusion of the Investigation, the Special Investigator will draft a written report that summarizes the information gathered, synthesizes the areas of agreement and disagreement between the parties and includes relevant written documentation gathered

APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

in the course of the investigation. The parties will be issued a written *Notice of Opportunity to Review the Investigation Report*. The Complainant and Respondent will each have an opportunity to review the draft Investigation Report and supporting evidence, and submit written comments on the accuracy of their statements, pose questions and submit additional information or evidence. Additional comments or information must be provided to the Special Investigator within five (5) business days of the date of the *Notice of Opportunity to Review the Investigation Report*. If further investigation is warranted based on information provided during the review period, the Special Investigator will continue the investigation until all relevant information and evidence is gathered.

D. Investigation Outcome - Finding

When the review period has ended, and the investigation is complete, the Special Investigator will finalize the Investigation Report, taking into account any additional information provided, and issue a Finding in consultation with the Title IX Officer. All information relied on by the Special Investigator shall be included in the final Investigation Report. The final Investigation Report will state whether the preponderance of the evidence supports a Policy violation, or not, and include a summary of the evidence relied on by the Special Investigator in reaching this determination. A preponderance of evidence means that it is more likely than not a violation of the Policy occurred.

E. Notice of Finding of Policy Violation

Both parties will be informed, separately, in writing, as to whether or not the investigation resulted in a finding of a policy violation.

IV. DISCIPLINARY ACTION

Upon receipt of the final Investigation Report and Finding, the relevant Department Chair and/or Dean or Associate Dean in consultation with the next level administrator(s), and/or Provost, or designee and the Title IX Officer, will determine appropriate disciplinary action, if any.

Notice of Disciplinary Action

In the event disciplinary action is to be imposed, the Department Chair and/or Dean or Associate Dean will issue a *Notice of Policy Violation and Disciplinary Action*. The Notice will be shared with both the Respondent and Complainant.

Disciplinary action will depend on the specific circumstances in each case and may include sanctions ranging from written reprimand up to and including termination of employment. Other administrative and/or non-disciplinary remedies may also be imposed, such as no contact directives, change in work duties, locations or schedules.

APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

To determine what type of disciplinary action is most appropriate (administrative or other remedies) the relevant Department Chair and/or Dean or Associate Dean, in consultation with other appropriate administrator(s) and the Title IX Officer, shall consider the following:

- The nature of the misconduct at issue;
- The impact of the misconduct on the Complainant;
- The impact or implications of the misconduct on the community or the University;
- Any prior sexual misconduct by the Respondent at the University or elsewhere that is known to the University;
- Respondent's prior disciplinary history at the University; and
- Any other mitigating, aggravating, or compelling circumstances.

Discipline shall be imposed in accordance with all procedural due process rights afforded employees based on their status in accordance with University policy and Maryland State law.

V. GRIEVANCE RIGHTS

Employees may grieve disciplinary action in accordance with the rights afforded to them based on their specific employee status.

A. Termination of Appointment of a Tenured or Tenure-Track Faculty Member

A tenured or tenure-track faculty member may be terminated in accordance with Section III. C. 7(a)-(c) and (8) of II-1.00 University System Policy on Appointment, Rank and Tenure of Faculty and Section III.C.6 (a)-(c) and 7 of the University of Maryland Policy on Appointment, Promotion and Tenure of Faculty ("APT policy") at <http://www.president.umd.edu/policies/2014-ii-100a.html>.

A tenured or tenure-track faculty member whose employment has been terminated for cause by the President may appeal to the Board of Regents in accordance with II-1.04 Procedures for Appeals to the University System of Maryland (USM) Board of Regents of Decisions to Terminate Tenured or Tenure-Track Faculty Members at <http://www.usmh.usmd.edu/regents/bylaws/SectionII/II104.html>.

B. Suspension of a Faculty Member

Any faculty member holding an appointment at ranks set forth in Paragraphs I.A. through I.E. of the University Policy II-1.00(A) University of Maryland Policy on Appointment, Promotion and Tenure of Faculty may be suspended in accordance with II-9.00(A) University of Maryland Policy on Suspension of Faculty at <http://www.president.umd.edu/policies/2014-ii-900a.html> ("Faculty Suspension Policy").

C. Other Disciplinary Action against a Faculty Member

Any faculty member who receives a disciplinary action other than suspension or termination based on a violation of this Policy may grieve the discipline and/or other

APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

action in accordance with the procedures set forth in II-4.00(A) University of Maryland Policies and Procedures Governing Faculty Grievances (“Faculty Grievance policy”) at <http://www.president.umd.edu/policies/2014-ii-400a.html>.

D. Adjunct Faculty

Adjunct faculty who receive a disciplinary action other than termination or suspension based on a violation of this Policy may grieve the discipline and/or other action in accordance with the procedures set forth in II-4.00(A) University of Maryland Policies and Procedures Governing Faculty Grievances at <http://www.president.umd.edu/policies/2014-ii-400a.html>

VI. FINAL OUTCOME

After the completion of all review and/or grievance processes initiated by either party, the Title IX Officer will promptly notify the Complainant of any modification of the final outcome, except as prohibited by State or Federal law.

Records Retention

The OCRSM shall maintain investigation and outcome records in accordance with the University’s record retention schedule.

The Respondent’s Unit Head, the OCRSM, and the Office of Faculty Affairs shall maintain records of any discipline, administrative, and/or other remedies in accordance with the University’s record retention schedule and standard University protocols regarding the retention of personnel records.