



UNIVERSITY OF
MARYLAND
UNIVERSITY SENATE

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March 13, 2015

Donald W. Webster
Chair, University Senate
Wye Research & Education Center
124 Wye Narrows Drive, POB 169
Queenstown, MD 21658

Dear Senate Chair Webster:

I am writing on behalf of the Senate Student Conduct Committee (SCC) in regard to our charge for the "Review of the Interim Sexual Misconduct Student Procedures" (Senate Doc. 14-15-16). The SCC was charged by the Senate Executive Committee (SEC) with this review on November 11, 2014. The deadline for our charge is March 27, 2015. I am writing to respectfully request an extension for the committee's review of these complex procedures.

Because of other pressing charges during this academic year, including the "Hazing Policy Revision" and the "*Code of Academic Integrity Changes*," the committee has not had ample time to thoroughly consider the interim Student Sexual Misconduct Investigation & Adjudication Procedures. The committee is actively evaluating the interim procedures, and we believe that the extended time will allow the committee to better consider as well as thoroughly evaluate how the interim procedures are currently working for the University.

We respectfully request an extension until November 6, 2015. We have selected this date in order to align the new deadline with the current reviews of the interim Sexual Misconduct Faculty Procedures and interim Sexual Misconduct Staff Procedures, which are being reviewed by the Senate Faculty Affairs Committee and Staff Affairs Committees, respectively. Thank you for your consideration of this request.

Sincerely,


Kasey Moyes
Chair, University Senate Student Conduct Committee

Enclosure(s): Charge from SEC, dated November 11, 2014

Cc: Reka Montfort, Director, University Senate
Andrea Goodwin, Director, Office of Student Conduct



University Senate CHARGE

| | |
|---------------------------|---|
| Date: | November 11, 2014 |
| To: | Kasey Moyes Chair, Student Conduct Committee |
| From: | Donald Webster Chair, University Senate  |
| Subject: | Review of the Interim Sexual Misconduct Student Procedures |
| Senate Document #: | 14-15-16 |
| Deadline: | March 27, 2015 |

The Senate Executive Committee (SEC) requests that the Student Conduct Committee review the attached interim Student Sexual Misconduct Investigation & Adjudication Procedures and make recommendations on whether they are appropriate.

The U.S. Department of Education's Office for Civil Rights (OCR) provided guidance regarding the Violence Against Women Act (VAWA), which was reauthorized in 2013. This guidance required higher education institutions to develop specific sexual misconduct policies and procedures. As a result, the University System of Maryland (USM) revised its Policy on Sexual Misconduct (V-1.60) and asked all USM institutions to align their policies accordingly. In addition, the University was charged with developing procedures for each of its major constituencies. The attached student procedures were developed as an element of the University of Maryland Sexual Misconduct Policy & Procedures (VI-1.60[A]), which has been approved on an interim basis pending University Senate review. Complaints against students based on a violation of the policy will be reviewed in accordance with these procedures.

Specifically, we ask that you:

1. Review the interim University of Maryland Student Sexual Misconduct Investigation & Adjudication Procedures (Appendix A of the University of Maryland Sexual Misconduct Policy & Procedures (VI-1.60[A])).
2. Consult with the University's Title IX Coordinator and the Director of Student Conduct regarding the development of the interim student procedures.
3. Review similar student procedures for complaints of sexual misconduct at our peer institutions and other Big 10 institutions.

4. Review the University's past process for handling student sexual misconduct cases.
5. Review the interim University of Maryland Sexual Misconduct Policy & Procedures ([VI-1.60\[A\]](#)) and consider whether the proposed student procedures align with the University's interim policy, USM policy, and VAWA guidelines.
6. Consult with the University's Office of Legal Affairs on any recommended revisions.
7. If appropriate, recommend whether the interim student procedures should be revised.

We ask that you submit your report and recommendations to the Senate Office no later than March 27, 2015. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, extension 5-5804.

Attachment

DW/rm

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I. OVERVIEW

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 Students. Sexual misconduct is an umbrella term that encompasses dating violence, domestic violence, sexual harassment, sexual assault, sexual violence, sexual exploitation, sexual intimidation, relationship violence and stalking.

Definitions

Administrative Review refers to the Director of Student Conduct making an independent determination about whether there are grounds to challenge the Finding from the final Investigative Report.

Deputy Title IX Coordinator is generally someone who has received significant training on sexual misconduct investigation and adjudication, is an administrator at the University, and provides managerial assistance and support to the Office of Sexual Misconduct and Relationship Violence (OSM).

Notice of Investigation refers to formal notification to each party that the University is conducting an investigation into the complaint of sexual misconduct.

Notice of Opportunity to Review Draft Investigative Report refers to the formal notification informing the parties of their opportunity to review and take notes on the draft investigative report.

Investigation Outcome Notice refers to formal notification to each party of the outcome of the investigation, the formal charges and a request to contact the Director of Student Conduct or designee for an outcome conference meeting.

Standing Review Committee (SRC) is the formal body composed of a combination of five students, faculty and staff who are specifically trained to hold conferences with all the parties and any witnesses in order to review the information presented by the Special Investigator (and others as the SRC deems appropriate) to make a determination as to whether a Policy violation has occurred and impose sanctions as applicable.

SRC Roster refers to the current list of persons on campus who have been adequately trained and are qualified to act as members of the SRC.

SRC Coordinator refers to an administrative staff person who is responsible for a range of administrative duties related to the logistics of scheduling SRC members for adjudication conferences and appellate review.

SRC Appellate Body refers to three members of the SRC who have been adequately trained and are qualified to review Appeals.

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SRC Conference Notice is the formal notification each party receives that a SRC Conference will be held, including the date and time.

SRC Conference Outcome Notice is the formal notification to each party of the SRC's final decision. It also includes information about appeals.

Voluntary Resolution is an informal resolution process that does not involve any disciplinary action.

Time Frame for Resolution

Consistent with the goal to maximize educational opportunities and minimize the disruptive nature of the investigation, adjudication and resolution, the Office of Sexual Misconduct & Relationship Violence (OSM) seeks to resolve all reports within sixty (60) days, depending on when the report is received. In general, an Investigation may last up to thirty-five (35) business days, from the date the complainant informs the OSM of their intent to proceed with an Investigation and sufficient information for the OSM to determine that the report falls under Section II (Applicability) and raises a potential violation under Section IV (Prohibited Conduct) of the Policy.

Adjudication will generally take up to twenty-one (21) business days from the date of the Investigative Finding. Business days do not include weekends or holidays. The Title IX Officer may set reasonable time frames for required actions under the Policy. Those time frames may be extended for good cause as necessary to ensure the integrity and completeness of the Investigation, comply with a request by external law enforcement, accommodate the availability of witnesses, accommodate delays by the parties, account for University breaks or vacations, or address other legitimate reasons, including the complexity of the Investigation (including the number of witnesses and volume of information provided by the parties) and the severity and extent of the alleged conduct. 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 promptness.

Filing A Complaint

A complaint of sexual misconduct should be made directly to:

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

The University encourages all individuals to promptly report Prohibited Conduct so that immediate and corrective action can be taken to eliminate the conduct, prevent its recurrence, and address its effects. The University will provide support and assistance and will respond consistent with the procedural options available at the time of the report. Upon receipt of a

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report, the Title IX Officer or designee within the OSM will make an immediate assessment of the risk of harm to the parties or to the broader campus community and will take steps necessary to address any risks. These steps will include contacting the OSC to facilitate Protective Interim Measures that provide for the safety of the parties and the campus community when appropriate.

The University recognizes that deciding whether to make a report and choosing how to proceed are personal decisions that may evolve over time. At the time a report is made, a complainant does not have to decide whether to request any particular course of action. Through coordinated efforts the OSM, OSC, and R&R will provide support to assist each individual in making these important decisions; and consistent with the goal of safety for all community members, these staff will make every effort to respect an individual's autonomy in making the determination as to how to proceed. Any individual can also make a report to external law enforcement agencies.

Notification to Complainant

Upon receipt of a complaint, the Title IX Officer or designee such as a Deputy Title IX Coordinator within either the OSC, or R&R, will ensure that the complainant is provided with a copy of the Sexual Misconduct Policy and *Student Sexual Misconduct Investigation & Adjudication Procedures*. Additionally the complainant will be informed of the following:

- The option to: (1) notify law enforcement for possible criminal investigation and the filing of criminal charges; (2) file a complaint with the university for investigation and adjudication under University administrative processes; (3) proceed with both criminal and University complaints; or (4) pursue neither option;
- How to file a complaint under the University's administrative process and how the internal University investigative and adjudicative processes work;
- The right to seek medical assistance, as necessary;
- Guidance regarding the preservation of evidence;
- Available community and campus resources and services;
- The right to an advisor and the advisor's role;
- The right to a support person and the support person's role;
- The University's prohibition against retaliation;
- The University's potential obligation to proceed with an investigation and possible adjudication to ensure the safety and well-being of the complainant and/or others in the campus community in the absence of a formal complaint and/or desire of the complainant to remain anonymous.

Initial Assessment of Complaint

When a report is made, the Title IX Officer or designee will conduct an Initial Assessment. The assessment will determine whether the alleged conduct would present a potential violation of the Policy and whether further action is warranted based on the alleged conduct.

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The first step of the Initial Assessment will usually be a preliminary meeting between the Complainant and the Special Investigator from the OSM to gather facts that will enable the OSM, in consultation with other offices as appropriate, to:

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

Where possible, the OSM will seek action consistent with the complainant's expressed wishes. The University's ability to fully investigate and respond to a report may be limited if the complainant requests that her/his name not be disclosed to the respondent or declines to participate in an Investigation. When a complainant requests her/his name or other identifiable information not be disclosed and/or that no further action be taken, the Title IX Officer will balance this request with its obligation to provide a safe and non-discriminatory environment for all community members.

At the conclusion of the Initial Assessment, the OSM will determine the appropriate resolution route. Resolution may include:

- No further action,
- Voluntary Resolution, or
- The initiation of an Investigation and Adjudication that may lead to disciplinary action.

Regardless of the manner of resolution, a respondent may choose to accept responsibility at any stage in the process.

Protective Interim Measures

Based on the nature and circumstances of the report, the Director of the OSC or designee may authorize interim protective measures to ensure the safety and well being of the complainant and others in the campus community, as appropriate. Either party may request Protective Interim Measures regardless of whether any particular course of action is sought. Information about interim protective measures can be found on *page 12* of the Sexual Misconduct Policy.

Role of the Support Person, Attorney, and Non-Attorney Advisor

Throughout the process, any participant may have a Support Person present at any meeting related to resolution of a report under the Policy. The Support Person may be anyone over the

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age of eighteen (18), of the individual's choosing, who is not a party or witness involved in the Investigation. In addition, the parties may have a second person present: an additional Support Person, a Non-Attorney Advisor, or, at the party's own initiative and expense, an Attorney.

Notice and Meeting with the OSM

The parties must provide five (5) business days *advance* notice to the OSM of the name(s) and relationship of any individual(s) who will accompany them to any investigation or adjudication proceedings, and what their respective roles are (i.e. Support Person, Non-Attorney Advisor, Attorney). Once chosen by a student to serve as a Support Person, Non-Attorney Advisor or Attorney, each designated individual must meet with a representative from the OSM before they are allowed participation. This is to ensure participants understand the expectations of their respective roles, privacy considerations, and appropriate decorum. A party's inclusion of a Support Person, Attorney, or Non-Attorney Advocate is at the sole expense of the party.

Support Person: A complainant and respondent may choose to be assisted by a Support Person of their choice. A Support Person is someone who can provide emotional, logistical, or other kinds of assistance. The Support Person cannot be a fact witness or provide statements in the proceedings. 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 delay the proceeding. The Support Person may accompany the party to any investigative, administrative, or adjudicative proceeding under the Policy.

It is each party's decision whether and how they choose to engage a Support Person throughout the Investigation and Adjudication processes. Therefore if a party requests or submits any type of form authorizing the Support Person to receive information or documents regarding the party, such a request will be denied. The Office of Sexual Misconduct and Office of Student Conduct, will at all times communicate and correspond directly with the party.

Attorney or Non-Attorney Advisor: An Attorney or Non-Attorney Advisor may assist a complainant or respondent at their own initiative and expense. The role of the Attorney or Non-Attorney Advisor is limited to providing advice and consultation directly to the party they are accompanying. It is not to provide representation of behalf of the party, as an attorney would do in a formal legal proceeding. In this way the Attorney or Non-Attorney Advisor is a participant who is present solely to advise and consult with the party throughout any proceeding. An Attorney or Non-Attorney Advisor may accompany the party to any investigative, administrative, or adjudicative meeting or proceeding under the Policy. A party's Attorney or Non-Attorney Advisor may not delay, or otherwise interfere with the investigative and adjudication processes.

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If a party has an Attorney or Non-Attorney Advisor, it is each party's responsibility to communicate and share information with their Attorney or Non-Attorney Advisor. If a party submits any type of form authorizing the Attorney or Non-Attorney Advisor to receive information or documents regarding the party, such a request will be denied. The Office of Sexual Misconduct and the Office of Student Conduct, will at all times communicate and correspond directly with the party.

When scheduling a SRC conference in which a party has notified the SRC Coordinator that an Attorney or Non-Attorney Advisor and Support Person plan to participate, the SRC Coordinator will make reasonable efforts to accommodate the Attorney or Non-Attorney Advisor's and Support Person's schedule, while balancing the University's commitment to a prompt and equitable process. The University will prioritize the availability of the parties, witnesses, and SRC members assigned to the matter when determining the date and time for the proceeding.

Voluntary Resolution

Voluntary Resolution does not involve an Investigation or disciplinary action against a respondent, and is not appropriate for all forms of conduct under the Policy. Voluntary Resolution, when selected by the complainant and deemed appropriate by the Title IX Officer, is a path designed to eliminate the conduct at issue, prevent its recurrence, and remedy its effects in a manner that meets the expressed preference of the complainant and the safety and welfare of the campus community. In cases in which Voluntary Resolution involves either the notification to or participation by the respondent, it is the respondent's decision whether to accept and/or participate in Voluntary Resolution.

As the title implies, participation in Voluntary Resolution is a choice, and either party can request to end this manner of resolution and pursue an Investigation and Adjudication at any time, including if Voluntary Resolution is unsuccessful at resolving the report. Similarly, a complainant can request to end an Investigation and pursue Voluntary Resolution at any time.

Voluntary Resolution may include: establishing Protective Interim Measures; conducting targeted or broad-based educational programming or training for relevant individuals or groups; providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; facilitating a meeting with the respondent with the complainant present (in cases that do not involve Sexual Assault); and any other remedy that can be tailored to the involved individuals to achieve the goals of the Policy. In some forms of Voluntary Resolution, the remedies imposed will focus on supporting the complainant with no participation or involvement by the respondent. In other forms of Voluntary Resolution, the respondent may agree to participate. Depending on the type of remedy used, it may be possible for a complainant to maintain anonymity.

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The OSM retains the discretion to determine, when selected by the complainant, which cases are appropriate for Voluntary Resolution. If a complainant requests Voluntary Resolution, and the Title IX Officer concludes that Voluntary Resolution is appropriate based on the factors outlined in the Initial Assessment, the Director of OSC or designee will take appropriate action by imposing individual and community remedies designed to maximize the complainant's access to all employment, educational, and extracurricular opportunities and benefits at the University and to eliminate a potential hostile environment. A complainant may request and decide to pursue Voluntary Resolution at any time.

Notification to the Respondent

In facilitating any form of Voluntary Resolution that involves the respondent, (and if an investigation is to occur) the Special Investigator will meet with the respondent and provide her/him with a copy of the Sexual Misconduct Policy and *Student Sexual Misconduct Investigative and Adjudicative Procedures*. At that meeting, the respondent will be informed of the following:

- The nature of the complaint;
- The issuance of a no contact order (and provided a copy of the order if issued by OSC);
- Available community and campus resources and services;
- The right to a support person and the support person's role;
- The right to an advisor and the advisor's role;
- The University's prohibition against retaliation; and
- How the voluntary resolution and investigative and adjudicative processes work.

Voluntary Resolution may also include restorative principles that are designed to allow a respondent to accept responsibility for misconduct and acknowledge harm to the complainant or to the University community. Restorative models will be used only with the consent of both parties, under the supervision of the Director of OSC or designee (i.e. University-sanctioned trained professionals) and following a determination by the OSM that the matter is appropriate for a restorative approach.

The complainant will not be compelled to engage in mediation, to confront directly the respondent or to participate in any particular form of informal resolution. Mediation, even if voluntary, shall not be used in cases involving Sexual Assault.

To assess pattern or systemic behavior fairly, the OSM will maintain records of all reports and conduct referred for Voluntary Resolution. Information disclosed during the Voluntary Resolution process may be considered during a subsequent Investigation or Adjudication of a similar nature involving either or both parties, as may be relevant. The time frame for completion of Voluntary Resolution may vary, but the OSM and OSC will seek to complete the process

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within thirty (30) business days of the complainant's request.

II. SEXUAL MISCONDUCT INVESTIGATION

Following the Initial Assessment, and in consultation with the complainant, the OSM will initiate a prompt, thorough, and impartial Investigation of conduct that is a potential violation of the Policy and is not being addressed through Voluntary Resolution. The OSM will designate a Special Investigator who has training and experience investigating allegations of Prohibited Conduct. The Special Investigator will coordinate the gathering of information to make an investigative finding regarding whether the alleged conduct constitutes a violation of the Policy by a preponderance of the evidence. A preponderance of the evidence means that it is more likely than not that the conduct 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 Interim Protective Measures and other remedies as necessary to eliminate the alleged conduct and to address its affects.

Notice of Investigation

The Director of OSC or designee will send the complainant and the respondent a written Notice of Investigation. This Notice will generally be issued within five (5) business days of receipt of notice from the complainant of the intent to proceed with Investigation and sufficient information for the OSM. The Notice of Investigation will contain a summary of the conduct at issue, the range of potential violations under the Policy, and the range of potential sanctions. Where appropriate, the Notice of Investigation will also contain notification that expulsion is a potential sanction and that expulsion precludes re-enrollment or re-admission to UMD. Upon receipt of the Notice of Investigation, or at any 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.

The OSM 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 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 complainant, the respondent, and any other individuals who are willing to participate and have information relevant to the investigation. The

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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 both parties. The Special Investigator will also gather any available physical or documentary evidence, including prior statements by the parties or witnesses, any communications between the parties, email messages, social media materials, text messages, and other records as appropriate and available.

Investigation Timeline

The University will seek to conclude the Investigation within thirty (30) business days from the issuance of the Notice of Investigation. The time frame for completion of the Investigation, or any designated time frames of steps in the Investigation, may be extended for good cause as necessary to ensure the integrity and completeness of the Investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for University breaks or vacations, to account for complexities of a case (including the number of witnesses and volume of information provided by the parties), or to address other legitimate reasons. 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 promptness.

Where the OSM is made aware that there is a concurrent criminal investigation, the Special Investigator will coordinate with law enforcement so that any University processes do not interfere with the integrity or the timing of the 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 or designee will nevertheless 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 review following the initial criminal investigation. All community members, including students, faculty and other University employees, are expected to cooperate with the OSM, and the Special Investigator in the Investigation, as well as the Adjudication, of any report to assure fairness and procedural due process. The Title IX Officer or designee may request the appearance of persons from the University community who can provide substantial, relevant evidence. Both a complainant and a respondent may decline to participate in proceedings under the Policy. The Title IX Officer will determine whether the Investigation and Standing Review Committee Conference will proceed without the complainant or the respondent.

Special Considerations

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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 informative 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. Any information the Special Investigator does not include as relevant in the Final Investigative Report will be attached as appendices. The Special Investigator will not exclude direct observations or reasonable inferences drawn from the facts. Other information will be considered as outlined below:

Character: Any documents submitted that speak to the character, or lack thereof, of either party will not be included in the investigative report.

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.

Prior Sexual History with Other Parties: A party's sexual history with an individual other than the complainant or respondent may be relevant under very limited circumstances to prove intent, motive, absence of mistake, or to explain an injury or physical finding.

Consolidation of Reports: At the discretion of the OSM, multiple reports may be consolidated in one Investigation or one Standing Review Committee Conference 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 complainant, multiple respondents or related conduct involving the same parties that would otherwise have been heard under the Code of Student Conduct (provided that it does not delay the prompt resolution of conduct under the Policy).

Impact Statement: The complainant and respondent will be provided the opportunity to submit a written Impact Statement. These written Impact Statements will not be considered in the determination of responsibility, but will be provided to the Special Investigator, and at the appropriate stage of the process, to the SRC members for consideration in the determination of the sanction and remedy. The Impact Statement may be submitted at any

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time in the process, provided that it is received no later than five (5) days after the parties have completed their review of the Investigative Findings. The parties may submit a supplemental Impact Statement to the SRC if there is a change in circumstances warranting an updated Impact Statement. The Impact Statements will be shared with the parties, and may be redacted at the discretion of the OSC, R&R, and Title IX Officer, or in accordance with FERPA.

Review of Draft Investigation Report

At the conclusion of the Investigation, the Special Investigator will prepare a written report that summarizes the information gathered, synthesizes the areas of agreement and disagreement between the parties with any supporting information or accounts, and includes an Investigative Finding as to whether a Policy violation has likely occurred. However, before the report is finalized, the complainant and respondent will be given the opportunity to review a draft Investigation Report, which will not include the Investigative Finding, and may be presented in redacted format. The parties will not receive an electronic or written copy, nor may they photograph or copy the draft Investigation Report, but they will be permitted to take notes on the content.

A complainant and respondent may submit any additional comment or information to the Special Investigator within five (5) business days of the date of the notice of the opportunity to review of the draft Investigation Report. This is the final opportunity for the parties to identify any additional information or witnesses. In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the Special Investigator at this juncture will not be considered by the Special Investigator or SRC.

Investigative Finding and Notification

Upon receipt of any additional information from the complainant or respondent or after the five (5) business day comment period has lapsed without comment, the Special Investigator will make an Investigative Finding. The finding is based on the Special Investigator's current assessment of the outcome of the investigation, and whether it is more likely than not, that a violation of the Policy has occurred. In reaching this determination, the Special Investigator will consult with the Title IX Officer. The Special Investigator may also seek information regarding prior disciplinary history and UMPD regarding prior criminal history. Once the report is finalized it will be sent to the Director of Student Conduct.

Outcome Conference

Upon issuance of the Investigative Finding, and where appropriate, the Director of Student Conduct will recommend sanctions and issue formal charges. Both the complainant and respondent will be notified of the Investigative Finding and the proposed sanction(s) and/or remedy (ies) in writing at the same time. The OSC will issue an Investigation Outcome Notice

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to each party, and invite them to schedule an outcome conference with the Director to discuss the outcome. Each party will have the opportunity to meet, separately, with the Director of Student Conduct or Assistant Director of Rights & Responsibilities depending on where the complaint originated. The Director/Assistant Director will share the Investigative Finding and, as applicable, the recommended sanction with the complainant and the respondent, and the remedy with the complainant. During the Outcome Conference, the parties will each have an opportunity to review the full Investigation Report. The parties will not, however, receive an electronic or written copy, nor may they photograph or copy the Investigation Report. The parties will be permitted to take notes on the content.

Where there has been an *Investigative Finding that a Policy violation has likely occurred*, the parties may:

- Accept both the Investigative Finding and proposed sanction;
- Accept the Investigative Finding, but request a SRC Conference on the recommended sanction; or,
- Reject the Investigative Finding and sanction recommendation and request a SRC Conference on both; or,
- Reject the Investigative Finding and request a SRC Conference, on the Investigative Finding to determine whether a Policy violation was committed and/or to determine an appropriate sanction.

Where there has been an *Investigative Finding that no Policy violation has likely occurred*, the complainant may:

- Accept the Investigative Finding (on one or all of the alleged violations); or
- Reject the Investigative Finding (on one or all of the alleged violations) and request Administrative Review.

The complainant and respondent must communicate their chosen course of action to the Director of Student Conduct, or designee in writing (e.g., email, fax, letter) within five (5) business days of notification of the Investigative Finding.

III. IMPOSITION OF SANCTIONS

The Policy prohibits a broad range of behaviors, which are serious in nature. In keeping with the University's commitment to a learning and working environment free from sexual misconduct, the Policy provides the Director of Student Conduct and the SRC with wide latitude in the imposition of sanctions tailored to the facts and circumstances of each report, the impact of the misconduct on the complainant and surrounding community, and accountability for the respondent. 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

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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.

In cases that are resolved at the Outcome Conference after the Investigation, the Director of Student Conduct is responsible for determining the appropriate sanction. In cases that are resolved through a Conference with the SRC, the SRC is responsible for determining the appropriate sanction. In reaching this determination, the SRC may solicit information from the complainant, the respondent and any other individual who can provide information relevant to a determination regarding potential sanctions. The SRC may also review any written Impact Statements submitted by the complainant and the respondent when determining sanctions.

In determining the appropriate sanction, the Director of Student Conduct and the SRC shall consider the following factors:

- 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 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;
- Whether the respondent \ has accepted responsibility for the conduct;
- Maintenance of a safe and respectful environment conducive to learning;
- Protection of the University community; and,
- Any other mitigating, aggravating, or compelling circumstances to reach a just and appropriate resolution in each case.

The Director of OSC and the SRC may also consider restorative outcomes that, taking into account the safety of the community as a whole, allow a respondent to develop insight about his or her responsibility for the behavior, learn about the impact of the behavior on the complainant and the community, and identify how to prevent or change the behavior.

Where the Director of Student Conduct or SRC concludes that a sanction of suspension or expulsion 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 of 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 suspension or expulsion, the imposition of sanction will be deferred pending the conclusion of any appeal. Protective Interim Measures in

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effect for the respondent will continue pending the conclusion of any appeal.

Sanctions that Impact a Student's Status

Sanctions may be imposed individually or in combination. Sanctions that affect a student's status with the University include the following:

Expulsion, which must be approved by the Vice President of Student Affairs, and the President of the University, means that a student is removed from the University permanently and may not re-enroll or be re-admitted to UMD.

Suspension for a Definite or Indefinite Period, which must be approved by the Vice President of Student Affairs, means that the student is removed from good standing and must leave the University for a definite or indefinite period. This form of suspension anticipates that the student may eventually return if applicable conditions are satisfied.

Disciplinary Probation for a Definite or Indefinite Period, including probation with associated conditions or requirements as set by the Director of Student Conduct or designee, or the SRC, means that a student may remain at the University but may be required to satisfy specified conditions or requirements, report regularly to a designated administrator, and be barred from holding any office or participating in any activity in which the student represents the University, including athletics or other competitive teams, or from participating in any University-recognized student organizations either within or outside the University community. The sanction of probation prohibits graduation until the period of probation has ended and the student has complied with all requirements.

Expulsion, suspension for a definite or indefinite period, and disciplinary probation will be noted on a student's transcript.

Sanctions that Do Not Impact a Student's Status

Sanctions that do not affect a student's good standing status with the University 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 was 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 the Office of Sexual Misconduct in consultation with the Office of Student Conduct and/or Rights & Responsibilities.

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Disciplinary Reprimand. Written warning in the form of an official reprimand that is formally communicated by a letter giving the student notice that any subsequent Policy violation will carry more serious sanctions.

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

Records of Student Discipline and Effect of Withdrawal

The existence of a pending Investigation or Adjudication under the Policy will be noted as part of a student's transcript. In addition, currently active sanctions of probation, suspension, or expulsion will be noted as part of 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, the matter will be resolved without the student. In some cases, the transcripts may be withheld until the matter is resolved, or marked with, "Disciplinary Action Pending." In the event of a withdrawal, or where the respondent declines to participate in proceedings under the Policy, the SRC Conference Meeting may proceed without the respondent. After withdrawing, the respondent will not be eligible to return to the University until the proceedings under the Policy have been finally concluded.

IV. REMEDIES

The Title IX Officer or designee in consultation with the OSC and the R&R, as appropriate, will identify reasonable 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 should seek to restore to the complainant, to the extent possible and within reason, all benefits and opportunities lost as a result of the Prohibited Conduct. The Title IX Officer will also identify remedies to address the effects of the conduct on the University community.

The Director of Student Conduct and Title IX Officer will consider the appropriateness of remedies, including Protective Measures, on an ongoing basis to assure the safety and well-being of the parties throughout the process. Long-term remedies may include extending or making permanent any Interim Protective Measures or implementing additional measures tailored to achieve the goals of the Policy. Many of the remedies and supports that a Reporting Party might need after a finding of responsibility will have already been provided as Interim Protective Measures, including but not limited to academic accommodations, short term counseling, and housing arrangements. The Title IX Officer or designee will in all cases, consider whether there is a need for additional remedies. Additional remedies or supports may be included in the proposed sanctions, such as reassignment or removal of the respondent from a class or a dormitory.

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V. ADJUDICATION OPTIONS

At the conclusion of the Outcome Conference, one of the following will occur:

Imposition of Final Finding, Sanction, and Remedy

Where both the complainant and the respondent agree to the Investigative Finding and recommended sanction(s), or where neither party rejects the Investigative Findings and sanction recommendations, the Director of Student Conduct may adopt the Findings as final and impose the sanction(s). The finality of the outcome, which is not subject to further appeal or review, will be communicated to the parties, in writing at the same time.

If the proposed sanction involves dismissal from the University (suspension or expulsion), the Director of Student Conduct will delay imposition of the final findings and sanction based on acceptance, in order for the party accepting responsibility to consult with either the Attorney, Non-Attorney Advisor, Parent or Legal Guardian, before the acceptance and imposition is considered final.

Administrative Review by Director of Student Conduct: Investigative Finding of No Policy Violation

Where the complainant requests Administrative Review of the Investigative Finding that no Policy violation occurred, both the respondent and the complainant will have the opportunity to meet with the Director of Student Conduct or submit additional information in writing. The Director may agree with the Investigative Finding, reverse the finding, or request additional investigative follow-up. The Director of Student Conduct will render a decision in writing to both parties at the same time within ten (10) business days of receipt of the request for Administrative Review. This timeframe may be extended for good cause provided that both the delay and the reason for the delay are communicated to the parties in writing.

Where the Director of Student Conduct agrees with the Investigative Finding, this determination is final and is not subject to further appeal or review. Where the Director reverses the Investigative Finding that there is no Policy violation, the matter will be immediately forwarded for Adjudication by the SRC. Where the Director of Student Conduct requests additional Investigation, the matter will be returned to the Special Investigator for further review.

Adjudication by Standing Review Committee: Review of an Investigative Finding that a Policy Violation Occurred

If the respondent challenges the Investigative Finding that a Policy violation has likely occurred, the OSC or designee will issue a Standing Review Committee Conference Notice to the complainant and the respondent and forward the Investigative Final Report to the SRC for adjudication. The SRC's role is twofold: determination that a Policy violation occurred by a

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preponderance of the evidence and, if warranted, imposition of sanctions.

Adjudication by Standing Review Committee: Review of Recommended Sanction Only

Where either the complainant or the respondent requests a SRC Conference only on the recommended sanction, a SRC Conference will be convened for the sole purpose of determining the appropriate sanction.

Standing Review Committee Conference

The SRC Conference's adjudication process will generally be completed within twenty-five (25) business days from the date of the SRC Conference Notice. As with all time frames in the Policy, this time frame may be extended for good cause with notice to the parties in writing.

Upon receipt of a SRC Conference Notice, a SRC will be designated to review all relevant information gathered in the Investigation. The SRC is a body composed of a combination of five (5) staff, faculty and students. Any individual designated by the University to serve on the SRC must have sufficient training or experience to serve in this capacity. A SRC member may decline to participate on the basis of an actual conflict of interest, bias, or lack of impartiality. A SRC Chair will conduct and preside over the Conference with all the parties, and each party and potential witnesses separately. The SRC Chair will be specifically trained on the additional requirements of acting as Chair of the SRC Conference.

SRC Conference Procedures

At the SRC Conference the Special Investigator is responsible for presenting sufficient information and evidence to support the finding of a Policy violation.

When the Special Investigator presents the Investigative Finding to the SRC, it is not a closed session. Both parties, including their respective Support Persons and Attorneys or Non-Attorney Advisors may be present. The Special Investigator will present the Investigative Finding to the SRC, and the SRC members will pose questions to the Special Investigator based on the presentation. When the SRC has concluded questioning the Special Investigator, the Chair will invite the parties to submit to the Chair questions they wish the Committee to ask the Special Investigator. The Chair will recess and synthesize the questions to maintain an orderly inquiry, and minimize repetition. The Chair will pose the questions to the Special Investigator, retaining discretion regarding relevancy.

The SRC may then meet separately with each party in a session which will be closed to the other party and to the Special Investigator. Likewise, the SRC will meet with available witnesses in sessions, which will be closed to the parties and the Special Investigator. The SRC Chair and members will question each party and witness attending a session.

After a consideration of all relevant information, the SRC will make its own determination by a

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preponderance of the evidence whether a Policy violation has occurred. Preponderance of the evidence means that it is more likely than not that the conduct occurred. The SRC's determination must be reached by a majority vote.

If the SRC finds that a violation has occurred, it will determine and impose the sanction. Prior to doing so, it will offer to listen to and/or review a written Impact Statement. It will meet separately with a party wishing to make an Impact Statement in a session closed to the other party and the Special Investigator.

The public, except for the immediate members of the parties' families, may not attend the SRC Conference.

Notice of SRC Conference Outcome

Within five (5) business days of the conclusion of the SRC closed session conferences the Office of Student Conduct will provide a written Notice of Outcome from the SRC to the complainant and the respondent at the same time. The OSC will also provide written notice, at the same time to both parties, of any change in the Outcome that occurs before the Outcome becomes final.

The SRC Notice of Outcome will include the finding by the SRC as to whether there is a Policy violation, the rationale for the result, and a brief summary of the evidence on which the decision is based, as appropriate. Where there is a finding of a Policy violation, the respondent will be informed of any sanctions, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements. The complainant will be informed of any sanctions and remedies that directly relate to the complainant, including information about the respondent's presence on campus (or in a shared class or residence hall), that may help a complainant make informed decisions or work with the University to eliminate Prohibited Conduct and prevent its recurrence.

The SRC Notice of Outcome will also include information about the appeal process, including the available grounds for an appeal, and the time frame for submitting an appeal. If neither party seeks an appeal within five (5) business days of the SRC Notice of Outcome, any sanction imposed by the SRC will take effect immediately.

VI. APPEAL

The parties may appeal the portions of the SRC Outcome that directly relate to that party. This means that the complainant and the respondent may only appeal the portions of the SRC Outcome articulated in the SRC Notice of Outcome as described above. Mere dissatisfaction with the Outcome is not a valid basis for appeal. The appeal must be submitted in writing using

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the *Notice of Appeal* form¹, to the SRC Coordinator within five (5) business days of receipt of the SRC Notice of Outcome. The scope of the appeal is limited only to the three permissible grounds that have been accepted for review (listed below). If the appeal request moves forward, the other party will be notified and given five (5) business days to respond. Responses shall be submitted directly to the SRC Coordinator or designee. Appeals filed by each party will be considered together in one appeal review process. Receipt of the written appeal will be acknowledged in writing. The parties may have their Attorney or Non-Attorney Advisor submit written responses on their behalf.

Grounds for Appeal

Grounds for appeal shall be limited to:

- Procedural Error: A violation of procedural due process means that the decision was negatively influenced by a failure of the SRC to take a procedural step or fulfill a procedural requirement established by this policy.
- New Evidence: New evidence is significant evidence that could not have been previously discovered and presented by the appellant through reasonable diligence.
- Substantive Due Process: A violation of substantive due process means that the SRC decision was based upon an illegal or constitutionally impermissible consideration (e.g. party's gender, race, age, national origin, sexual orientation or a party's exercise of first amendment freedoms)

If neither party submits an appeal, the SRC Outcome becomes final after five (5) business days. Appeals submitted after five (5) business days will be denied.

Considerations

In any request for an appeal, the burden of proof lies with the party requesting the appeal because the SRC Outcome is presumed to be a reasonable and just determination. Appeals are not intended to allow for a rehearing of the complaint. A review of the matter will be prompt and narrowly tailored to the stated appeal grounds. In most cases, appeals are confined to a review of the written record and the pertinent documentation regarding the grounds for appeal (i.e. the Final Investigative Report, SRC Outcome, and the written record as contained in the Notice of Appeal submitted by the appellant. However, depending on the nature of the appeal, the SRC Appellate Body may speak to the Special Investigator, the SRC Conference Chair, or the parties, as appropriate.

SRC Appellate Body

The SRC Appellate Body is composed of three (3) members from the Standing Review

¹ *Notice of Appeal – Sexual Misconduct Adjudication Process form*, is included here as Appendix A-1, and may be found on the Student Conduct website: <http://osc.umd.edu/OSC/Default.aspx>

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Committee who did not participate previously in adjudicating the case. Depending on the basis of the requested appeal, the SRC Appellate Body may:

- Affirm the Outcome;
- Alter the Outcome;
- Return the matter to the SRC with instructions to reconvene to cure a procedural or substantive error or to assess the weight and impact of newly discovered information.

An Appellate conference will be convened before a newly constituted SRC Appellate Body where the procedural or substantive error cannot be cured by returning the matter to the original SRC. The SRC Appellate Body Chair will render a written decision on the appeal to both parties within fifteen (15) business days from the date of the submission of all appeal documents. Appeal decisions by the SRC Appellate Body are final with the exception of cases involving suspension or expulsion that allow for further review.

VII. FINAL OUTCOME

The President of the University must review and approve any sanction of expulsion, if this sanction is so recommended by the Vice President of Student Affairs. The Vice President of Student Affairs must also approve any sanction of suspension.

After all review processes are concluded, the Title IX Officer or designee will promptly notify the complainant and respondent, in writing, and in person when possible, of the final outcome of the sexual misconduct complaint.

Post-Resolution Follow Up

After a sanction or remedy is issued, the OSM 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. 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 OSM with feedback about their experience with the process and recommendations regarding ways to improve the effectiveness of the campus' implementation of the Policy.

END OF DOCUMENT

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NOTICE OF APPEAL FORM

In the matter of: _____.

Under the *Student Sexual Misconduct Investigation & Adjudication Procedures*, either party has a right to appeal. An appeal must be submitted within five (5) business days of receipt of the SRC's Notice of Adjudication Outcome.

Appeals submitted after the five (5) business day period, will not be considered. The other party(s) will be notified if an appeal is submitted and will be provided five (5) business days to submit a response.

Appeals are not intended to allow for a rehearing of the complaint. A decision to grant an appeal is made only where there is clear error.

Appellate procedures can be found in the *Student Sexual Misconduct Investigation & Adjudication Procedures*, Appendix A, on pages 19-20.

Appellant (Submitted By): _____.

You must check the basis for your appeal:

Procedural Error: A violation of procedural due process means that the decision was negatively influenced by a failure of the SRC to take a procedural step or fulfill a procedural requirement established by this policy.

New Evidence: New evidence is significant evidence that could not have been previously discovered and presented by the appellant through reasonable diligence.

Substantive Due Process: A violation of substantive due process means that the SRC decision was based upon an illegal or constitutionally impermissible consideration (e.g. party's gender, race, age, national origin, sexual orientation or a party's exercise of first amendment freedoms)

Please state all the information that should be considered by the SRC Appellate Body in support of your appeal (under one of the grounds noted above.) Please do not restate any information already contained in the Investigative and/or SRC Adjudication Outcome Report. Those documents will be provided to the appellate body.

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Please use additional paper if necessary.

VERIFICATION

I _____
(appellant/your name) acknowledge and agree that this statement is truthful and complete to the best of my knowledge.

Acknowledged and Agreed.

By: _____
 Appellant Signature

Date: _____