



University Senate TRANSMITTAL FORM

Senate Document #:	14-15-16
Title:	Review of the Interim Sexual Misconduct Student Procedures
Presenter:	Ed Kenny, Chair, Senate Student Conduct Committee (SCC)
Date of SEC Review:	April 19, 2016
Date of Senate Review:	April 28, 2016
Voting (highlight one):	<ol style="list-style-type: none"> 1. On resolutions or recommendations one by one, or 2. In a single vote 3. To endorse entire report
Statement of Issue:	<p>In fall 2014, the Office of Civil Rights & Sexual Misconduct (OCRSM) and the University administration worked together to develop interim procedures for resolving complaints of sexual misconduct brought against students at the University. The procedures were approved on an interim basis in October 2014 and were subsequently sent to the Senate for review. On November 11, 2014, the Senate Executive Committee (SEC) charged the Student Conduct Committee (SCC) with review of the interim University of Maryland Student Sexual Misconduct Investigation & Adjudication Procedures, Appendix A of the of the University of Maryland Sexual Misconduct Policy. The SEC asked the SCC to make recommendations on whether the interim procedures were appropriate for the University.</p>
Relevant Policy # & URL:	<p>VI-1.60(A) University of Maryland Sexual Misconduct Policy & Procedures – Appendix A http://umd.edu/policies/docs/VI-160A.pdf</p>
Recommendation:	<p>The Student Conduct Committee recommends that the Student Sexual Misconduct Complaint Procedures (Appendix A of VI-1.60[A] University of Maryland Sexual Misconduct Policy & Procedures) be amended as indicated in the procedures document immediately following the committee’s report.</p>
Committee Work:	<p>The SCC began reviewing its charge during the fall 2014 semester. The SCC met with the Title IX Officer to discuss the interim Student Procedures. The SCC consulted extensively with the Director of Student Conduct, and reviewed guidance from the White House Task Force to Protect Students from Sexual Assault on what should be included in campus policies and procedures.</p>

	<p>The SCC also sought to remain apprised of concurring revisions to the Sexual Misconduct Procedures for faculty and staff through the parallel processes in the Senate Faculty Affairs and Staff Affairs Committees. Over the course of the 2014-2015 academic year, the SCC developed a number of potential revisions for the interim procedures. The SCC reviewed research from a sampling of peer universities. Because of the complexity of the issue and the detailed discussions needed for adequate review of the interim procedures, the SCC submitted a request for a deadline extension, which was approved by the SEC in March 2015.</p> <p>In fall 2015, the Senate Office received word that the OCRSM and the administration were developing revised versions of all three sets of the interim procedures. Revised procedures for students were approved by the President on an interim basis on October 1, 2015. The SCC reviewed the new interim student procedures, and focused on a number of areas of change in the procedures, which it discussed thoroughly.</p> <p>After final review, the SCC approved the revised Student Sexual Misconduct Complaint Procedures via an email vote ending November 16, 2015. The SCC sent its recommendations forward for review by the SEC. However, at the same time, the Office of the Attorney General (OAG) of the State of Maryland determined that it needed to conduct a holistic review of all policies and procedures related to sexual misconduct at all University System of Maryland (USM) institutions. As a result, the procedures developed by the SCC were not sent to the Senate for review. In March 2016, after extensive consultation between the OAG, the OGC, and the OCRSM, the Senate Office received revised interim procedures for review.</p> <p>The SCC reviewed the revised interim procedures during March 2016. The SCC discussed various areas of the procedures, including changes to the Appeals process. After consultation with the OGC and OCRSM, and after deliberation as a committee, the SCC voted to approve its proposed revisions to the new interim procedures via an email vote, concluding April 11, 2016.</p>
Alternatives:	The Senate could reject the recommendations. However, the Senate would lose an opportunity to revise the Student Sexual Misconduct Complaint Procedures.
Risks:	There are no associated risks.
Financial Implications:	There are no financial implications.
Further Approvals Required:	Senate approval, Presidential approval.

Senate Student Conduct Committee (SCC)

Report on Senate Document # 14-15-16

Review of the Interim Sexual Misconduct Student Procedures

April 2016

2015-2016 Student Conduct Committee Members

Ed Kenny, Chair

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BACKGROUND

In fall 2014, the Office of Civil Rights & Sexual Misconduct (OCRSM) and the University administration worked together to develop interim procedures for resolving complaints of sexual misconduct brought against students at the University. The procedures were approved on an interim basis in October 2014 and were subsequently sent to the Senate for review.

On November 11, 2014, in conjunction with the Senate's review of the interim University of Maryland Sexual Misconduct Policy (Senate Doc. 14-15-11), the Senate Executive Committee (SEC) charged the Student Conduct Committee (SCC) with review of the interim University of Maryland Student Sexual Misconduct Investigation & Adjudication Procedures, which appeared as Appendix A of the of the University of Maryland Sexual Misconduct Policy. The SEC asked the SCC to make recommendations on whether the interim procedures were appropriate for the University (Appendix 1).

COMMITTEE WORK

The SCC began reviewing this charge during the fall 2014 semester. The SCC initially met with the Title IX Officer of the OCRSM on February 13, 2015 to discuss the interim Student Sexual Misconduct Investigation & Adjudication Procedures. Throughout its review process, the SCC consulted extensively with the Director of Student Conduct, and reviewed guidance from the White House Task Force to Protect Students from Sexual Assault on what should be included in campus policies and procedures (Appendix 2). The committee also sought to remain apprised of concurring revisions to the Sexual Misconduct Procedures for faculty and staff through the parallel processes in the Senate Faculty Affairs and Staff Affairs Committees, which began in the spring 2015 semester.

The interim procedures were presented to the committee as a hybrid between an investigative model and an adjudication model that attempted to combine aspects of both models into a set of procedures that would emphasize the capacity and skills of the OCRSM, while promoting transparency and due process. The SCC noted that the interim procedures clarified roles of certain individuals and units on campus, in order to encourage checks and balances throughout the process. The interim procedures also introduced a Standing Review Committee (SRC), which is a specialized group of faculty, staff, and students on campus who have received specialized, on-going training on sexual misconduct and investigation processes. The interim procedures also emphasized that any Advisors in the process are not allowed to address the SRC or speak on behalf of the parties. The SCC carefully reviewed the interim procedures and the processes described within. The SCC also considered how complaints of sexual misconduct had previously be handled by the University under the *Code of Student Conduct*. In addition, the SCC reviewed all of the comments gathered by the Senate Equity, Diversity, & Inclusion (EDI) Committee from the two open Town Hall Forums that it hosted during its review of the Sexual Misconduct Policy.

Over the course of the 2014-2015 academic year, the SCC developed a number of potential revisions for the interim procedures. Many of the edits were technical in nature, but the committee also had lengthy discussions on certain aspects of the interim procedures, including the facets of the Voluntary Resolution stage, the 18-year-old age restriction on the Support Person for the parties, the training of the SRC members and the Special Investigator, the absence of cross-examination during the SRC Conference, the inability for the parties to receive copies of the draft Investigation Report, the removal of appellate responsibilities for these cases from the SCC, and the limited grounds for appeal as compared with the grounds for appeal available under the *Code of Student Conduct* via the University Student Judiciary (USJ) Honor Board process for other alleged acts of misconduct.

In spring 2015, the SCC reviewed research from a sampling of universities in the Big Ten Conference and other peer institutions, as gathered by the Senate Office. The SCC looked at information about similar

student procedures at Michigan State University, the University of Illinois at Urbana-Champaign, the University of North Carolina at Chapel Hill (UNC), the University of California, Los Angeles (UCLA), and the University of Wisconsin–Madison. The SCC focused on a number of areas, including:

1. How complaints of sexual misconduct are received (e.g., how the Respondent is informed; what is involved with the intake process; what interim protective measures are available),
2. How complaints of sexual misconduct are investigated (e.g., whether there are internal or external investigators, how many investigators are involved, whether students can read the investigative reports),
3. How complaints of sexual misconduct are reviewed (e.g., whether there is a review committee; how the committee is comprised; whether the parties are allowed to address the committee during the proceedings; whether cross-examination is allowed),
4. What the representation options are for the parties (e.g., whether students can have an attorney advisor present; whether attorneys can address the investigator or the review committee),
5. How appeals are handled (e.g., who can submit an appeal and when; on what grounds an appeal can be made; who hears the appeal),
6. How the sanctioning options and final resolution stage are structured (e.g., what is denoted on a student's transcript if they are found responsible for violating a sexual misconduct policy), and
7. What type of policy document describes the prohibition of sexual misconduct, and which office is in charge with adjudication responsibilities.

Because of the complexity of the issue and the detailed discussions needed for adequate review of the interim procedures, the SCC submitted a request for a deadline extension in March 2015 (Appendix 3). The SEC reviewed the extension request from the SCC at its meeting on March 24, 2015. The SEC voted in favor of granting the extension request. The new deadline was set for November 2015, which coincided with the deadlines of the Faculty Affairs and Student Staff Committees.

In fall 2015, the Senate Office received word that the OCRSM and the administration were developing revised versions of all three sets interim procedures. During the spring and summer months, while using the interim procedures, the OCRSM found that there were ways in which the process could be improved, and determined that immediate changes were needed in order to streamline processes. Revised procedures for students were approved by the President on an interim basis on October 1, 2015 (Appendix 4). The new interim procedures were re-named as the Student Sexual Misconduct Complaint Procedures. The 2015-2016 SCC immediately began reviewing these new interim procedures by comparing them with the previous version, in order to examine how many of the committee's anticipated edits were incorporated and to see where any differences existed.

The SCC noted a number of differences in the new interim process, including a reorganization of the document, the removal of the Definitions section, more specificity on roles and responsibilities of various units and entities, as well as other edits for clarity of process. There were also substantive changes to the sanctioning process, the roles of the SRC and the SCC in particular, and the grounds for appeal. The SCC held an additional meeting with the Title IX Officer to discuss the new interim procedures and the substantive changes that had been made. As a result, the SCC developed new revisions and revisited some previous discussions to ensure that it conducted as thorough a review as possible.

After final discussion of the procedures as edited by the committee, the SCC approved the revised Student Sexual Misconduct Complaint Procedures via an email vote ending Monday, November 16, 2015. The SCC sent its recommendations forward for review by the SEC. However, at the same time, the Office of the Attorney General (OAG) of the State of Maryland determined that it needed to conduct a holistic review of all policies and procedures related to sexual misconduct at all University System of Maryland (USM) institutions. As a result, the procedures developed by the Faculty Affairs Committee were not sent to the Senate for review. In March 2016, after extensive consultation between the OAG, the Office of

General Counsel (OGC), and the OCRSM, the Senate Office received revised interim procedures for review (Appendix 5).

During spring 2016, the SCC met with representatives from the OGC and the OCRSM and learned that the revised procedures have been changed so that they are better organized and more clearly define the two phases of the University's Title IX response to a complaint of sexual misconduct: the Investigation Phase and the Adjudication Phase. The SCC also learned that the revised procedures more clearly define what happens when an investigation results in a recommendation of no policy violation, and what the Complainant's rights are in such a situation. The revised procedures had also been edited to clarify when a complaint is handled by disciplinary conference, and when a complaint goes to an SRC for review; it was explained that this provided a practical approach to how these cases are handled, and addresses procedural and practical challenges that the OCRSM had encountered under the current procedures. In addition, the SCC learned that the revised procedures clarify how Alternative Resolution works and when it is appropriate, and the procedures clarify in each phases, at each juncture, who is making decisions and when. Lastly, it was explained to the SCC that references to the President were removed from the process, so that the President is no longer involved in reviewing or signing off on expulsions, which is best practice amongst universities nationwide.

The committee considered all of the changes to the procedures, and compared the revised document to the version that the committee had sent forward in November 2015. The SCC identified a number of additional changes to the procedures, including modifications to the Adjudication and Appeal sections, as well as technical and minor changes throughout.

After consultation with the OGC and OCRSM, and after deliberation as a committee, the SCC voted to approve its proposed revisions to the new interim procedures via an email vote, concluding April 11, 2016.

RECOMMENDATIONS

The Student Conduct Committee recommends that the Student Sexual Misconduct Complaint Procedures (Appendix A of VI-1.60[A] University of Maryland Sexual Misconduct Policy & Procedures) be amended as indicated in the procedures document immediately following this report.

APPENDICES

Appendix 1 – Charge from the Senate Executive Committee on the Review of the Interim Sexual Misconduct Staff Procedures (dated November 11, 2014)

Appendix 2 – White House Task Force Checklist for Campus Sexual Misconduct Policies

Appendix 3 – Extension Request from the Student Conduct Committee (dated March 13, 2015)

Appendix 4 – Interim Student Sexual Misconduct Complaint Procedures (approved on interim basis on October 1, 2015)

Appendix 5 – Revised Student Sexual Misconduct Complaint Procedures (approved on an interim basis on March 21, 2016)

APPENDIX A: STUDENT SEXUAL MISCONDUCT COMPLAINT PROCEDURES

Recommended Changes to the Interim Student Sexual Misconduct Complaint Procedures
New Text in Blue/Bold (**example**), Removed Text in Red/Strikeout (~~example~~), Moved Text in Green (example)

I. Overview

II. Rights to Support Person and Advisor

- A. Support Person
- B. Advisor
- C. Party Obligations
- D. Non-Party Participant Requirements

III. Reporting

IV. Complaint Intake Process

- A. Notification to the Complainant
- B. Requests for Confidentiality
- C. Initial Assessment of Complaints
- D. Interim Protective Measures

V. Resolution Processes

- A. Timeframe for Resolution
- B. Alternative Resolution Process
- C. Investigation Process

VI. Adjudication

- A. Disciplinary Conference with Director of Student Conduct
- B. Standing Review Committee (SRC) Conference

VII. Remedies and Sanction

- A. Impact and Mitigation Statements
- B. Remedies
- C. Sanction Considerations
- D. Sanctions
- E. Notice of Sanction

VIII. Appeals

- A. Grounds for Appeal
- B. Considerations
- C. Appellate Body

IX. Final Outcome

X. Records Retention

XI. Academic Transcripts and Effect of Withdrawal

XII. Post-Resolution Follow-Up

APPENDIX A: STUDENT SEXUAL MISCONDUCT COMPLAINT PROCEDURES

I. OVERVIEW

These procedures (“**Student Procedures**”) set forth in Appendix A accompany the University of Maryland (UMD) Sexual Misconduct Policy (the “Policy”) and are the exclusive procedures that govern the handling of all reports or complaints of **sSexual mMisconduct** against UMD students. Key terms used herein are defined in the Policy. For example, **sSexual mMisconduct** is an umbrella term defined in the Policy that encompasses **dDating vViolence**, **dDomestic vViolence**, **sSexual vViolence**, **sSexual hHarassment**, **sSexual aAssault**, **sSexual eExploitation**, **sSexual iIntimidation**, **rRelationship vViolence**, and **sStalking**.

Both the Complainant and Respondent may participate or decline to participate in the complaint process. As appropriate, the Title IX Officer⁷ and the Director of Student Conduct, will determine whether the Investigation and University Resolution processes will proceed without the participation by one or both parties. A lack of participation by a party does not necessarily preclude a finding of a Policy violation or the imposition of appropriate disciplinary action.

Reference herein to the Title IX Officer includes the Director of the Office of Civil Rights and Sexual Misconduct (**OCRSM**) and designees. Reference herein to the Director of Student Conduct includes the Assistant Director of Resident Life for Student Conduct in the Office of Rights and Responsibilities (**R&R**) and designees.

II. RIGHTS TO SUPPORT PERSON AND ADVISOR

Throughout the process, any party may be accompanied to any meeting related to an investigation and resolution of a complaint by up to two (2) other people: (1) a Support Person, and (2) an Advisor. Meetings include, but are not limited to, the following meetings concerning a report: meetings with OCRSM, meetings with **the Office of Student Conduct (OSC)**, investigative interviews, document reviews, Disciplinary Conferences with the Director of Student Conduct, Standing Review Committee (**SRC**) Conferences, **aAlternative rResolutions** and sanction meetings.

A. Support Person

A party 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 evidence 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. A Support Person shall not be an active participant and the parties must speak for themselves.

B. Advisor

A party may choose to be assisted by an Advisor of their choice, including an attorney, at their own initiation and expense. The Advisor is a non-participant who is present to provide advice and consultation to a party. An Advisor cannot be a witness or provide evidence in a 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 parties must speak for themselves. An Advisor may not delay, or otherwise interfere with, the University’s process.

C. Party Obligations

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Throughout the process, ~~University staff and participants~~ **the Title IX Officer or designee, Investigator(s), and other University representatives** will communicate and correspond directly with the parties, not through a Support Person or Advisor. Parties are responsible for ~~having~~ **ensuring that** Support Persons and Advisors follow the non-party participation requirements below. When a party wishes to have a Support Person or Advisor accompany them to a meeting, the ~~individual party~~ **individual party** must notify OCRSM or OSC in advance. Parties are also responsible for making sure appropriate authorization exists (**e.g., authorization related to FERPA**) for the University to communicate **the** non-party participation requirements below to any Support Person or Advisor.

D. Non-Party Participant Requirements

All Support Persons and Advisors must review the materials about the scope of their respective roles, prior to accompanying a party to any meeting or other activity. These materials may be obtained from the OSC, or online at the OCRSM website, www.umd.edu/ocrsm/. This is to ensure the Support Persons and Advisors are informed about the process and their respective roles. All parties, Support Persons, and Advisors are expected to understand their roles and adhere to the University's expectations regarding decorum and privacy considerations.

III. REPORTING

Complaints and other reports of ~~sSexual~~ ~~misconduct~~ **Sexual Misconduct** against a student may be made to the following:

- 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).

Reports may also be made to any Responsible University Employee (RUE). An RUE, as defined by the Policy, includes all University administrators, supervisors in non-confidential roles, faculty members, campus police, coaches, athletic trainers, resident assistants, and non-confidential first responders. RUEs are required to share all reports of Sexual Misconduct they receive promptly with the Title IX Officer or designee.

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 Student 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 working with OSC and other campus offices to facilitate Interim Protective Measures that provide for the safety of the parties and the campus community, when appropriate.

A Complainant may choose to make a report to the University to pursue resolution under these **Student Procedures**, and may also choose to make a report to law enforcement. A Complainant may pursue either of these options or both options at the same time. The criminal process and the University's internal process under these Student Procedures are separate and independent. A Complainant who wishes to pursue criminal action should contact campus police or external law enforcement directly. See Policy Section VII for more information on criminal reporting.

The University recognizes that deciding whether to report ~~sSexual~~ ~~misconduct~~ **Sexual Misconduct** and proceed with a formal complaint under these Student Procedures is a personal decision that may evolve over time. While

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prompt reporting is strongly encouraged, there is no time limit for reporting ~~a complaint of s~~Sexual ~~m~~Misconduct. The OCRSM and the OSC will coordinate to provide support and assistance to each Complainant in making important decisions related to reports of sSexual ~~m~~Misconduct. Consistent with the goal of safety for all community members, the University will make every effort to respect a Complainant's autonomy in making their own personal decisions after reporting sSexual ~~m~~Misconduct. ~~However, w~~When appropriate, the University, through the OCRSM, retains the right to initiate a formal complaint on its own, independent of any individual's decision as to how they wish to proceed.

IV. COMPLAINT INTAKE PROCESS

A. Notification to the Complainant

Upon receipt of a complaint, the OCRSM will ensure that the Complainant is provided with a copy of the Policy and Student Procedures and informed of their rights and responsibilities. Either the OSC or the OCRSM will provide information to the Complainant about the University's internal; administrative complaint process and review with them their respective rights and responsibilities. The Complainant will be informed of available community and campus resources and services; their right to a Support Person and the Support Person's role; their right to an Advisor and the Advisor's role; their right to file a report with law enforcement, or not; and the University's prohibition against retaliation. The Complainant will have an opportunity to ask questions and seek additional information.

B. Requests for Confidentiality

When~~re~~ possible, the OCRSM will take action consistent with the Complainant's expressed wishes regarding confidentiality. The University's ability to fully investigate and respond to a complaint may be limited if the Complainant requests that their name not be disclosed to the Respondent or declines to participate in an Investigation. ~~When~~ **If** a Complainant requests their 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. The University retains the right to proceed with a complaint as necessary to meet its obligations; ~~and,~~ in some cases, would not be able to honor a request for confidentiality.

C. Initial Assessment of Complaint

When the University receives a 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~~ **whether** further action is warranted based on the reported conduct, **and whether the University has jurisdiction over the parties.**

The first step in the Initial Assessment is a preliminary meeting between the Complainant and the OCRSM and/or the OSC to gather information that will enable the OCRSM, in consultation with other offices, as appropriate, to:

- Assess the nature and circumstances reported in the complaint;
- Assess the safety of the Complainant and of the campus community;
- Implement any appropriate ~~i~~nterim ~~p~~rotective ~~m~~asures;
- Assess for pattern evidence or other similar conduct by the Respondent as relevant to the safety assessment;

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- 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; and
- Assess the reported conduct for possible referral to the University of Maryland Police Department (UMPD) for a timely warning under the Clery Act.

At the conclusion of the Initial Assessment, the OCRSM will determine the appropriate next steps, including but not limited to: no further action, the imposition of Interim **Protective** Measures, Alternative Resolution, and/or proceeding with an investigation.

When the Initial Assessment determines the reported conduct does not constitute a potential violation under the **is** Policy, but may violate other University policy, the complaint may be referred to another appropriate University official for review and resolution.

When **re** the Initial Assessment **determines the alleged reported conduct does constitute a potential violation under the Policy but** reveals that the University lacks jurisdiction over the Respondent, the University will take available and reasonable steps to address the Sexual Misconduct, prevent its recurrence, and address its effects at the University.

D. Interim Protective Measures

Based on the nature and circumstances of the complaint, the Director of Student Conduct, after consultation with the Title IX Officer, may authorize **i**Interim **p**Protective **m**Measures to ensure the safety and well-being of the Complainant and others in the campus community, as appropriate. The Director of Student Conduct will promptly inform the Respondent (if they are a member of the University community) of any **i**Interim **p**Protective **m**Measures that will directly impact the Respondent and provide an opportunity for the Respondent to respond.

The Director of Student Conduct retains discretion to impose and/or modify any **i**Interim **p**Protective **m**Measures based on all available information. Interim **p**Protective **m**Measures will remain in effect until the University's final resolution of the **s**Sexual **m**Misconduct complaint. **Interim Protective Measures may be made permanent, as needed, after adjudication.** A party may challenge the imposition of **i**Interim **p**Protective **m**Measures, or a decision not to impose **i**Interim **p**Protective **m**Measures, by contacting the Director of Student Conduct to address any concerns. Information about **i**Interim **p**Protective **m**Measures can be found on pages 11-12 of the Policy.

V. RESOLUTION PROCESSES

A. Timeframe for Resolution

Consistent with the goal of maximizing educational opportunities, remedying the effects of Prohibited Conduct and promoting campus safety while minimizing the possible disruptive nature of the process, the OCRSM and OSC will strive to resolve all complaints within sixty (60) business days of receipt. In general, the investigation phase may last approximately four to five weeks and the adjudication phase may last approximately another four to five weeks. Good faith 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 the OCRSM or OSC.

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B. Alternative Resolution Process

~~In some cases, the Complainant may seek Alternative Resolution in lieu of investigation and adjudication.~~ Alternative Resolution is a process whereby remedies and interventions may serve to address the alleged Prohibited Conduct without proceeding to an investigation **and adjudication**. Alternative Resolution is not appropriate for complaints involving ~~sSexual vViolence~~, including ~~sSexual aAssault~~. **Neither party is required to accept responsibility for the alleged Prohibited Conduct in order to proceed with Alternative Resolution.** ~~The parties~~ **Either party** may decide not to proceed with Alternative Resolution and may request an investigation and adjudication at any time.

The Title IX Officer has the discretion to determine whether a complaint is appropriate for Alternative Resolution and retains discretion to terminate an ongoing Alternative Resolution process at any time.

The purpose of Alternative Resolution is to take appropriate action by imposing individual and community interventions and remedies designed to maximize the Complainant's access to educational, extra-curricular and/or employment activities at the University; **and/or to address the effects of the conduct on the larger University community**. Any combination of interventions and remedies may be utilized, including but not limited to:

- Increased monitoring, supervision, and/or security at locations or activities where the Prohibited Conduct occurred or is likely to reoccur;
- Targeted or broad-based educational programming or training for relevant individuals or groups;
- Academic and/or housing modifications for Student Complainants;
- Workplace modifications for Complainants;
- Completion of projects, programs, or requirements designed to help the **Respondent** manage behavior, refrain from engaging in Prohibited Conduct and understand why the Prohibited Conduct is prohibited;
- Compliance with orders of no contact that limit access to specific University **buildings or** areas or forms of contact with particular persons; and
- 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.

The imposition of remedies or interventions obtained through Alternative Resolution may be achieved by an agreement acceptable to the parties and University. **The OCRSM will work with the Director of Student Conduct to facilitate the development of this agreement.** In such cases **where an agreement is reached**, the terms of the agreement are implemented and the matter is resolved and closed. In cases where an agreement is not reached, and the Title IX Officer determines that further action is necessary, or if a Respondent fails to comply with the terms of the Alternative Resolution, the matter may be referred for ~~I~~investigation and ~~A~~adjudication under these **Student** Procedures.

Where the Complainant and Respondent and **the** University have reached an Alternative Resolution agreement, the parties will be provided **with** a written notice of the outcome **and a copy of the agreement. Entering into Alternative Resolution and signing an agreement does not mean that the Respondent admits responsibility; nor does it mean that there has been a finding of a Policy violation.** The Title IX Officer will maintain all records of matters referred for Alternative Resolution.

C. Investigation Process

When the Initial Assessment determines the University has jurisdiction over the Respondent and the alleged conduct, and where Alternative Resolution is not appropriate, an investigation will occur.

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1. Standard of Review

In making a determination about whether a Policy violation has occurred, the standard of review is preponderance of the evidence. A preponderance of the evidence means “it is more likely than not.” Thus, at the conclusion of the investigation phase, a recommended finding will be made ~~to as to whether~~, based on the information gathered, **that** it is more likely than not that the reported conduct **occurred and that it** constituted Prohibited Conduct in violation of the Policy.

2. Preliminary Meeting

Prior to an investigation, the OCRSM and/or OSC will notify both parties and require their attendance (separately) at a preliminary meeting with OSC. The purpose of the meeting is to ensure students are provided adequate information about the investigation and adjudication process, and have an opportunity to ask and receive answers to any questions they may have. When a party does not attend the preliminary meeting with OSC, the University shall proceed with an investigation, noting the party’s lack of attendance at the preliminary meeting.

a. Notice of Potential Policy Violation and Investigation

At the preliminary meeting, the Respondent will be informed verbally and in writing of: the circumstances of the alleged incident (which generally will include, to the extent known, the name of the Complainant and the date, time, and location), the Prohibited Conduct alleged as defined by the Policy, and the range of potential sanctions associated with the Prohibited Conduct. If a Respondent does not attend the preliminary meeting, the University will provide the Respondent with the information in writing. A copy of the Notice of Potential Policy Violation and Investigation will also be provided to the Complainant.

Both parties will also be informed during the preliminary meeting that they will have an opportunity to be heard regarding the complaint during the investigation process, including the opportunity to be heard during an interview with an ~~i~~Investigator regarding the alleged ~~s~~Sexual ~~m~~Misconduct.

b. Notice of Rights and Responsibilities

Both parties will be provided with a copy of the Policy and Student Procedures and informed verbally (if present at the Preliminary Meeting) and in writing of their rights and responsibilities pursuant to the Policy. This includes but is not limited to: no contact directives (and provided a copy), prohibitions against retaliation and guidance about reporting any retaliatory conduct, and available community and campus resources and services.

3. Role of the Investigator

The Title IX Officer will designate an Investigator(s) from the OCRSM and/or an external ~~i~~Investigator to conduct a prompt, thorough, fair, and impartial investigation. All ~~i~~Investigators will receive annual training on issues related to sexual and gender-based harassment, ~~s~~Sexual ~~a~~Assault, ~~d~~Dating ~~v~~Violence, ~~d~~Domestic ~~v~~Violence, and ~~s~~Stalking; and **on** how to conduct a fair and impartial investigation that provides parties with notice and a meaningful opportunity to be heard, **as well as that and** protects the safety of ~~e~~Complainants and the University community while promoting accountability.

4. Overview of the Investigation

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The investigation is an impartial fact-gathering process. It is an important stage of the process in which both parties have an opportunity to be heard regarding the complaint. During the investigation the parties will each have an opportunity to meet and speak with the Investigator, provide any relevant information about the reported conduct, and identify persons they believe the Investigator should speak with because they have relevant information. The Investigator will speak separately with both parties and any other individuals who may have relevant information. The Investigator will also gather any available physical evidence or documents, including prior statements by the parties or witnesses, communications between the parties, email messages, **text messages**, social media materials, and other records, as appropriate and available.

a. Special Considerations

Information related to the prior sexual history of either party is generally not relevant to the determination of a Policy violation. However, prior sexual history between the parties may be relevant in very limited circumstances. For example, where there was a prior or ongoing consensual relationship between the parties, and where Consent is at issue in the case at hand, evidence as to the parties' prior sexual history as it relates to Consent may be relevant to assess the manner and nature of communications between the parties. As noted in the Policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute Consent. Sexual history will never be used for purposes of illustrating either party's individual character or reputation. The Investigator will determine the relevance of prior sexual history and inform the parties if information about the parties' sexual history with each other is deemed relevant.

At the discretion of the OCRSM, multiple reports may be consolidated in one investigation if the information related to each incident is relevant in reaching a determination. 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 investigation and resolution of complaints.

b. Draft Report

At the conclusion of the investigation, the Investigator will draft a written investigation report that summarizes the information gathered (including, but not limited to, the names of witnesses and summaries of their statements), and synthesizes the areas of agreement and disagreement between the parties.

c. Notice of Opportunity to Review the Draft Investigation Report

Before the investigation report is finalized, the parties will be given an opportunity to review and respond to the draft report. Upon receipt of notice to review the draft report, the parties will each have five (5) business days to review the report and all underlying documents and submit comments, information and/or ask questions **of the Investigator(s)**. If there is any new or additional information to be provided by either party, it must be presented to the Investigator at this time. If further investigation is warranted based on the comments, information and/or questions provided during the review period, the Investigator will continue the investigation, as needed.

d. Final Investigation Report

Upon timely receipt of any additional information or comments from the parties or after the five (5) business day comment period has lapsed with no comments provided, and the investigation is complete, the Investigator will finalize the investigation report. The final investigation report will include **a summary of** all relevant information obtained in the course of the investigation, **an analysis and** proposed findings of material fact, and a recommendation by the Investigator as to whether the information gathered establishes, by a preponderance of the evidence, a potential Policy violation by the Respondent.

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Both parties will be contacted by the OSC, and directed to contact OSC to schedule separate meetings with the Director of Student Conduct to discuss next steps.

VI. ADJUDICATION

A. Meeting with Director of Student Conduct

The Director of Student Conduct will meet separately with each party to explain next steps and provide each party with a confidential copy of the final investigation report, including all attachments.

- When an investigation concludes with a recommended finding of a policy violation, and **either** expulsion or suspension is a possible sanction, the matter will be referred automatically to the Standing Review Committee (SRC) for an administrative determination of the initial outcome.
- **When an investigation concludes with a recommended finding of a policy violation, and neither expulsion nor suspension is a possible sanction, the OSC will resolve the Complaint by facilitating a Disciplinary Conference.**
- ~~For all other recommendations, including those of~~ **In all cases when an investigation concludes with a finding of** no policy violation, the OSC will resolve the Complaint by facilitating a Disciplinary Conference.
- ~~Determinations by the SRC or by OSC in a Disciplinary Conference shall be based on the preponderance of the evidence.~~

At the meeting, the Director of Student Conduct will explain the relevant process to each party, and inform each party of the date and time of the SRC Conference or Disciplinary Conference.

Each party will be allowed five (5) business days to submit a written response to the ~~F~~**final** ~~I~~**investigation** ~~R~~**report**, which will be considered by the respective reviewer, i.e., the SRC or Director of Student Conduct during the SRC or Disciplinary Conference process, as appropriate. All written responses will be shared with the other party prior to the SRC review or Disciplinary Conference.

In order to protect the privacy of all individuals involved, all materials shared with the parties are considered confidential and should not be publicly disclosed or released.

B. Disciplinary Conference

The Director of Student Conduct facilitates Disciplinary Conferences. Each party will be given an opportunity to speak separately to the Director of Student Conduct in person and respond to the information presented in the final investigation report. The Director of Student Conduct will consider any written response to the final investigation report submitted by the parties before issuing a decision.

The Disciplinary Conference decision shall be in writing~~s~~, and will include Policy violation findings and a rationale for the decision. The Disciplinary Conference Decision shall be issued to both the Complainant and Respondent.

Determinations by the Director of Student Conduct in a Disciplinary Conference shall be based on the preponderance of the evidence. In the event that the Director of Student Conduct finds that a Respondent is responsible for Prohibited Conduct, the Director of Student Conduct shall determine an appropriate sanction and/or remedy, as described in Section VII below.

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Before a sanction and/or remedy are issued, the parties shall have the opportunity to submit impact and mitigation statements, as described in Section VII below. Sanctions and remedies imposed as a result of a finding of responsibility for Prohibited Conduct after a Disciplinary Conference will not include expulsion or suspension. If either party disagrees with the outcome of the Disciplinary Conference, they may appeal pursuant to Section VIII below.

C. Standing Review Committee (SRC) Conference

The role of the SRC is to review cases where a Policy violation could result in a sanction of suspension or expulsion. The SRC's role is to review all the available information, and determine, independent of the Investigator's recommendation, whether it is more likely than not that the reported Prohibited Conduct occurred, constituting a Policy violation.

The SRC is a five member body composed of at least three faculty or staff (at least one of whom is faculty) and at least one student who receive on-going training to serve in this capacity, including a Chair who facilitates the conference. SRC members are obligated to disclose to the OSC any known conflicts prior to participating in any specific SRC Conference. Conflicts or familiarity with the individuals involved in the matter that are disclosed to the OSC will automatically disqualify an individual SRC member from participation in any particular review.

Both parties will be notified of the date, time, and location of the SRC Conference. If either or both parties are not in attendance, the SRC Conference may proceed. The parties are not required to participate and the SRC may not draw any adverse inference from a decision by either party not to participate. The Investigator is required to attend all SRC Conferences. The SRC and/or a party may request the attendance of witnesses who provided information to the Investigator.

The SRC Conference offers the parties an opportunity to address the SRC members, in person, about the allegations, and have their respective questions asked and answered. The parties may address any information in the final investigation report and supplemental responses. The parties may not directly question each other or any witness, but may submit written questions (to the SRC Chair) for the SRC to ask the Investigator, the other party, and/or any witnesses who are present. The SRC may exercise reasonable discretion to decline to ask questions submitted by the parties that are harassing, unnecessarily repetitive or irrelevant.

1. SRC Conference Format

The SRC Conference generally begins with the SRC Chair introducing the purpose of the conference, identifying all persons present, and then inviting the Investigator to summarize the Investigation and explain the evidence relevant to the alleged Prohibited Conduct in violation of the Policy. The SRC may pose questions directly to the Investigator, the parties, and any other witnesses. When the SRC has concluded its questioning, the Chair will invite the parties to submit written questions to be asked by the SRC of any of the witnesses, parties, or the Investigator. When all questioning is concluded, the parties will be given an opportunity to make brief closing statements. The SRC will then adjourn and the parties are excused.

If and when appropriate, the SRC, in its discretion, may suspend its review and request further investigation. Once the Investigator has concluded any further investigation, and if the recommendation by the Investigator is that there is sufficient evidence to support a finding of Prohibited Conduct in violation of the Policy (using a preponderance of the evidence standard), another SRC Conference will be scheduled. The OSC will use best efforts to complete this process as promptly as possible, and will notify the parties of the status, as appropriate.

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2. SRC Decision

The SRC will issue a written decision based on its review. The decision is determined by majority vote. The SRC decision will include findings of relevant fact and a finding as to whether the Respondent engaged in the Prohibited Conduct in violation of the Policy, or not (based on a preponderance of evidence standard).

If the SRC finds the Respondent responsible for a Policy violation by a preponderance of the evidence, the matter will proceed through the impact/mitigation statement phase, as well as the sanctioning phase below.

If the SRC does not find the Respondent responsible for a Policy violation based on a preponderance of the evidence, the Complainant may appeal the SRC Decision pursuant to section VIII below. If there is no appeal, the case is resolved, and notice of the final outcome will be issued.

VII. REMEDIES AND SANCTIONS

Any Disciplinary Conference or SRC decision will be sent by the OSC to the parties. Where there is a finding of responsibility, both parties have the opportunity, within three (3) business days from the date of receipt of the decision, to submit statements for consideration by the Director of Student Conduct in determining an appropriate sanction.

A. Impact and Mitigation Statements

The Complainant may submit a written statement describing the impact of the Prohibited Conduct on the Complainant, and/or request to meet with the Director of Student Conduct to provide their statement verbally.

The Respondent may submit a written statement explaining any factors the Respondent believes should mitigate or otherwise be considered in determining the sanction(s), and/or request to meet with the Director of Student Conduct to provide their statement verbally.

The Director of Student Conduct will consider any impact and mitigation statements in determining the remedies and sanctions to be imposed. The parties' respective statements will not be shared with the other party.

B. Remedies

The Title IX Officer, in consultation with the OSC, will identify reasonable short-term and/or long-term remedies to address the effects of the conduct on the Complainant, prevent its reoccurrence, 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, such as training for specific audiences, to address the effects of the conduct on the larger University community.

Remedies include, but are not limited to:

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- **Supportive measures**, such as: extended classwork deadline, or flexible deadlines, change of venue for taking an exam, change in exam date, and/or retaking of an exam.
- **Academic accommodations** such as: retroactive drop from a particular class, retroactive withdrawal from a semester, policy exemption requests, and/or tuition reimbursement.
- **Additional remedies** such as: no contact orders, denial of access, housing accommodations, schedule changes, counseling and/or referral to outside agencies.

C. Sanction Considerations

The imposition of disciplinary 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. Disciplinary sanctions may include educational, restorative, and rehabilitative components, such as completion of an educational project, 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 more severe sanctions, including suspension or expulsion from the University.

The Director of Student Conduct will determine the appropriate disciplinary sanction in every **sSexual mMisconduct** case. In reaching this determination, the following factors will be considered:

- The nature and degree of 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 relevant misconduct by the Respondent, including the Respondent's relevant prior discipline history;
- Respondent's acceptance of responsibility for the conduct;
- 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.

D. Sanctions

When the Director of Student Conduct concludes that a sanction 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 to determine whether the Respondent poses a serious disruption to the learning environment or a continuing danger to other members of the University community or University property. Interim suspension may be imposed at this point pending conclusion of the Appeal, where appropriate. Interim **pProtective mMeasures** already in effect will continue pending Appeal. Disciplinary sanctions for Policy violations 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 certain behavior is inappropriate.
- **“No Contact” Orders or Denial of Access.** 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.

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- **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. A permanent notation 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.
- **Expulsion.** The student is permanently separated from the University. A permanent notation will appear on the student's transcript. The student will also be barred from the University premises.

E. Notice of Sanction

Once a sanction is determined, the OSC will issue written notification of the sanction to both parties, as allowed by law, and provide the parties with information about their rights to appeal, per Section VIII below. This constitutes the conclusion of the initial outcome phase.

VIII. APPEALS

The Complainant and Respondent may appeal the outcome of a Disciplinary or SRC Conference, including the sanction issued under either process. The scope of the appeal is limited to the grounds set forth below. Mere dissatisfaction with the decision and sanction is not a valid basis for appeal. An appeal must be submitted in writing within five (5) business days of the date of receipt of the notice of sanction. If an appeal is received by the OSC, the other party will be notified and given five (5) business days from the date of receipt of the notice to respond. Responses shall be submitted directly to the OSC. Appeals filed by each party will be considered together in one appeal review process. All appeal documents will be shared with the other party.

If neither party submits an appeal, the decision and sanction are final after five (5) business days **from the date of receipt of the notice to respond**. Appeals submitted after five (5) business days shall be denied.

A. Grounds for Appeal

Grounds for appeal shall be limited to:

1. Substantial Procedural Error

Specified procedural errors or errors in interpretation of University policy were so substantial as to effectively deny a Complainant or a Respondent notice or a fair opportunity to be heard. Mere deviations from procedures that were not so substantial as to deny a Complainant or Respondent notice or a fair opportunity to be heard will not be a basis for sustaining an appeal.

2. New Evidence

New and significant relevant information has become available which a reasonably diligent person could not have discovered during the Investigation phase and/or prior to the issuance of the Disciplinary Conference or SRC Decision, as applicable.

3. Sanction

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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 or suspension.

B. Considerations

Appeals are not intended to allow for a second review of the facts of the case and determination of 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.

When the basis of the Appeal is new evidence, the **Appellate Body** ~~Director of Student Conduct, in consultation with the Title IX Officer,~~ will determine whether the information is new and was unavailable at the time of the investigation. If the information is determined not to be new, the Appeal will be denied. If the information is determined to be new and unavailable at the time of the investigation, ~~it will be provided to~~ the Appellate Body ~~for review and~~ **will make a** determination whether the new information could change the outcome of the SRC **or Disciplinary Conference** decision. If it is determined that the outcome could be impacted by the new evidence, the case will be sent back to the SRC **or to the Director of Student Conduct for further review.**

C. Appellate Body

The University Senate Student Conduct Committee (SCC) is the designated Appellate Body for all cases involving ~~s~~Sexual ~~m~~Misconduct. The SCC Appellate Body is composed of three (3) members from the SCC (**including at least one student**) who have had no previous involvement with the case, and have been trained to review such cases. Deference shall be given to the determinations of the SRC **or Disciplinary Conference as applicable.** The SCC Appellate Body considers any written appeal submission and, based on its review, may:

- Affirm the ~~SRC~~ Decision and the sanction imposed;
- Affirm the ~~SRC~~ Decision and reduce, but not eliminate, the sanction;
- Remand the case to the SRC **or Disciplinary Conference**, in accordance with Section VI, above.

The SCC Appellate Body Chair will render a written decision on the appeal to the OSC within ten (10) 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 require approval by the Vice President for Student Affairs.

IX. FINAL OUTCOME

After all review processes are concluded (or when the time for an appeal has passed with no appeal submitted, whichever is later), the OSC will promptly notify the Complainant and Respondent, in writing, of the final outcome of the ~~s~~Sexual ~~m~~Misconduct complaint.

X. RECORDS RETENTION

~~OSC and the Title IX Officer~~ **The OCRSM** will maintain records of all complaints, **Initial Assessments**, investigations, adjudications, appeals and ~~a~~Alternative ~~r~~Resolutions arising under this Policy in

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accordance with the University's Records Retention and Disposal Schedule.

OSC will maintain disciplinary records **for all cases that result in a finding of a policy violation in accordance with the University's Records Retention and Disposal Schedule. Disciplinary records** may be retained for longer periods of time or permanently, if so specified in the sanction.

XI. ACADEMIC TRANSCRIPTS AND EFFECT OF WITHDRAWAL

Disciplinary sanctions of expulsion and suspension are permanently noted on a Respondent's academic transcript. When a Respondent requests their transcript, the existence of a pending Investigation is also noted. In the event 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 the University proceedings under the Policy, the University will continue to process the disciplinary action in the student's absence. When a Respondent withdraws before resolution of pending disciplinary charges, the Respondent is ineligible to return to the University until the disciplinary proceedings have been resolved. In the event the student graduates while an Investigation and Resolution is pending, issuance of the student's diploma will be withheld until the case is concluded. Academic transcripts will be withheld until the matter is resolved or marked "Disciplinary Action Pending."

XII. POST-RESOLUTION FOLLOW UP

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

END OF DOCUMENT

Appendix 1 - Charge from the SEC



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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APPENDIX A

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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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STUDENT SEXUAL MISCONDUCT INVESTIGATION & ADJUDICATION PROCEDURES

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.

Checklist for Campus Sexual Misconduct Policies

The Task Force to Protect Students from Sexual Assault is committed to supporting institutions of higher education in preventing sexual misconduct, encouraging reports of such misconduct, improving responses to reports of such misconduct, and complying with applicable federal laws.

The following checklist for sexual misconduct policies (checklist) highlights elements that are particularly important for institutions to consider when drafting sexual misconduct policies as part of their overall response to sexual misconduct. The Task Force recommends using this document as a guided checklist for developing effective sexual misconduct policies. However, the Task Force cautions institutions not to adopt the checklist, in part or in whole, without first engaging in a comprehensive drafting process that considers the unique aspects of the institution and its student body. The items listed in the checklist are intended to be guidelines, neither exhaustive nor exclusive, to help a school cover the important bases.

The policy of each institution will vary in detail, specificity, and components, reflecting differences in state or local legal requirements and each school's students, size, administrative structure, and what it has learned from past experiences. Additionally, the checklist does not constitute legal advice or create additional legal obligations, and institutions that address these elements in their sexual misconduct policy, in part or in whole, may still be found to be in violation of federal law(s) (e.g., if the institution fails to effectively address a hostile education environment created by sexual misconduct).

Why Should a Campus Have a Separate Sexual Misconduct Policy?

The purpose of creating a sexual misconduct policy (policy) is to provide a single, easily accessible and user-friendly document for students, employees, and others affected by sexual misconduct to find information regarding an institution's rules and procedures, including the rights of students and the obligations of the institution and its employees. The policy should cover every department or school within the institution.

How Should a Campus Develop a Sexual Misconduct Policy?

The Task Force encourages each institution to engage in a comprehensive policy drafting process. The policy development process should be driven by campus leadership at the highest level so that the importance of this policy is clear to students, faculty, employees, and the committee drafting the policy.

Who should participate?

To improve the quality, effectiveness, and perceived legitimacy of the policy, the Task Force encourages institutions to:

- Identify key stakeholders – particularly students, concerned student groups, including LGBTQ student groups, campus security, local law enforcement, resident assistants,

survivors of sexual assault, and providers of victim support services, including local rape crisis centers – whose expertise and input should be incorporated into the drafting process.

- Identify the office or personnel responsible for drafting the policy, but also engage a range of administrators to ensure the policy has broad institutional support.
- Consider retaining an independent sexual assault policy expert to assist in reviewing and revising existing policies or drafting new ones.
- Engage in a vetting period where key stakeholders have multiple opportunities to provide feedback on the proposed policy to assess its clarity, quality, and effectiveness.

Who are the target audiences for the policy?

- Review the policy to ensure that it is set out in clear, logical sections that students can follow and understand. In determining whether the policy and its publication formats are user-friendly and appropriate in tone, policy drafters should review the material from the perspective of a student who has been affected by sexual misconduct.
- Ensure that the policy is published in a format or formats that make it readily available everywhere, including to students with disabilities and English language learners.

What other documents should be considered during development of the policy?

- Review all applicable federal laws, including Title IX of the Education Amendments of 1972, Title IV of the Civil Rights Act of 1964, the Family Educational Rights and Privacy Act of 1974, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act and their implementing regulations and related guidance; any applicable state and local laws; and consult with legal counsel to ensure that the policy complies with all applicable federal, state, and local laws.
- Coordinate the policy with other institution policies and procedures, including student codes of conduct and other nondiscrimination policies affecting students and employees.

What should happen when the policy is complete?

- Develop a plan for implementing and widely publicizing the policy to the entire campus community and provide mandatory training on the new policy.
- Establish procedures for regularly reviewing, evaluating, and updating the policy.
- Create user-friendly materials to explain the policy and how victims can get help, and provide these materials online and through other strategies appropriate for the campus.

What Should a Campus Consider Including in Its Sexual Misconduct Policy?

The following checklist highlights elements that are particularly important for institutions to consider when drafting sexual misconduct policies:

1. Introduction
 - a. Clear statement of school's prohibition against sex discrimination, which includes sexual misconduct.
 - b. Statement of the school's commitment to address sexual misconduct.
2. Scope of the Policy
 - a. Identify the persons, conduct, locations (including off campus), programs, activities, and relationships covered by the school's sexual misconduct policy.
 - b. Clearly state the policy applies to all students and employees, regardless of sexual orientation or gender identity, and explain that the policy applies to third parties.
 - c. Briefly explain the school's confidentiality policy, including reference to the more detailed confidentiality provisions in the policy. For a sample confidentiality policy go here: <http://notalone.gov/assets/reporting-confidentiality-policy.pdf>
3. Options for Assistance Following an Incident of Sexual Misconduct
 - a. Immediate Assistance
 - i. Identify and provide contact information for the trained on- and off-campus advocates and counselors who can provide an immediate confidential response in a crisis situation (e.g., obtain needed resources, explain reporting options, and help navigate the reporting process);
 - ii. Provide emergency numbers for on- and off- campus safety, law enforcement, and other first responders (e.g., the Title IX coordinator);
 - iii. Describe the sexual assault response team (SART) process and resources SART members can offer;
 - iv. Identify health care options, both on- and off- campus:
 1. Ensure the victim is aware of the options to seek treatment for injuries, preventative treatment for sexually transmitted diseases, and other health services.
 2. Discuss the option of seeking medical treatment in order to preserve evidence.
 3. Identify where/how to get a rape kit or find a Sexual Assault Nurse Examiner (SANE).
 4. List locations, including contact information, for an advocate (e.g., a local rape crisis center, on-campus advocacy program) who can accompany a victim to the hospital or health provider.
 - b. Ongoing Assistance

1. Identify counseling and support for victims of sexual misconduct, whether or not a victim chooses to make an official report or participate in the institutional disciplinary or criminal process.
 2. Identify options for disclosing confidentially with counseling, advocacy, health, mental health, or sexual-misconduct-related sources, both on and off campus.
 3. Identify those who can provide ongoing support during the institutional disciplinary or criminal process.
 - ii. Academic Accommodations and Interim Measures
 1. Describe the immediate steps and interim measures that the school can provide to ensure the safety and well-being of the victim, such as the ability to move dorms, change work schedules, alter academic schedules, withdraw from/retake a class without penalty, and access academic support (e.g., tutoring).
 2. Describe additional interim measures that the school may be able to provide for complainants while an investigation is pending such as no contact orders and changing the alleged perpetrator's living arrangements or course schedule. See Section 7.g about interim measures.
4. Title IX Coordinator: Identify the school's Title IX coordinator and briefly explain the Title IX coordinator's role in the school's overall response to sexual misconduct; provide references to sections of the policy that provide greater details regarding the Title IX coordinator's duties.
5. Definitions
- a. Clearly define all conduct prohibited by the policy, including:
 - i. Sexual harassment
 - ii. Hostile environment caused by sexual harassment
 - iii. Sexual assault
 1. Non-consensual sexual contact, and
 2. Non-consensual sexual intercourse
 - iv. Domestic violence
 - v. Dating violence
 - vi. Sexual exploitation
 - vii. Stalking
 - viii. Retaliation
 - ix. Intimidation
 - b. Additional terms that should be defined include:
 - i. Consent

The input of students and sexual assault experts can be helpful in developing a definition of consent. At minimum, the definition should recognize that:

 - consent is a voluntary agreement to engage in sexual activity;
 - someone who is incapacitated cannot consent;
 - past consent does not imply future consent;

- silence or an absence of resistance does not imply consent;
 - consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another;
 - consent can be withdrawn at any time; and
 - coercion, force, or threat of either invalidates consent.
- ii. Incapacitation (such as due to the use of drugs or alcohol, when a person is asleep or unconscious, or because of an intellectual or other disability that prevents the student from having the capacity to give consent)

6. Reporting Policies and Protocols

- a. Identify formal reporting options – e.g., criminal complaint, institutional complaint, report to “responsible employee,” including the Title IX coordinator. Explain how each option works and include contact information for the people to whom one can make a report.
- b. Identify alternatives to reporting – e.g., privileged or confidential disclosures
- c. Describe policies governing confidentiality
 - i. Specify those employees to whom a student can disclose in confidence and those “responsible employees” who must report incidents (including personally identifying details) to the Title IX Coordinator. Consider particularly how a school will ensure that a student understands an employee’s reporting obligation before he or she reveals any information to that employee.
 - ii. Describe what information will be kept confidential and what information may be disclosed, to whom it will be disclosed, and why.
 - iii. Explain when the school may not be able to honor a student’s request that his or her name not be disclosed to the alleged perpetrator or that no investigatory or disciplinary action be taken. Identify the employee responsible for evaluating such requests for confidentiality or no action.
- d. Explain the school’s reporting obligations under the Clery Act, including the annual reporting responsibilities of Campus Security Authorities and the school’s obligation to issue timely warnings.
- e. Explain the process for third-party and anonymous reporting.
- f. Ensure the policy prohibits retaliation against those who file a complaint or third-party report, or otherwise participate in the investigative and/or disciplinary process (e.g., as a witness), and explain that the school will take strong responsive action if retaliation occurs.
- g. Describe when the school will grant amnesty from drug, alcohol, and other student conduct policies.

7. Investigation Procedures and Protocols

- a. Identify the Title IX Coordinator(s) and explain roles and responsibilities.
- b. Identify who conducts the investigation and what an investigation might entail.
- c. Specify a reasonably prompt time frame for conducting the investigation and resolving the complaint, as well as the process for extending the timeframe.
- d. Explain the processes for preserving evidence.

- e. Provide the respondent and complainant equitable rights during the investigative process.
- f. Set forth parameters and clarify what information may and may not be shared during a parallel investigation with law enforcement (e.g., via a Memorandum of Understanding with local law enforcement).
- g. Explain that where necessary, the school will take immediate steps to protect complainants pending the final outcome of an investigation, including academic accommodations and other interim measures. These steps may include the ability to change housing or dining facilities; change work schedules; alter academic schedules; withdraw from/retake a class without penalty; access academic support such as tutoring; issue no contact orders; and change the alleged perpetrator's living arrangements or course schedule.
- h. Explain the school's response if a victim's request for confidentiality limits the school's ability to investigate a particular matter. A school may take steps to limit the effects of the alleged sexual misconduct and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the student complainant. Examples include: providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; revising and publicizing the school's policies on sexual misconduct; and conducting climate surveys regarding sexual misconduct.

8. Grievance/Adjudication Procedures

- a. Explain the grievance/adjudication process, including:
 - i. that mediation is never appropriate in sexual misconduct cases;
 - ii. that the preponderance-of-the-evidence (i.e., more likely than not) standard will be used in any Title IX fact-finding and related proceedings, including any hearings;
 - iii. identify the adjudicators, including:
 - 1. the trained individuals who determine whether the alleged sexual misconduct occurred
 - 2. the individuals who determine the sanction
 - 3. a process by which either party may raise issues related to potential conflicts of interest of such individuals
 - iv. the persons who may attend and/or participate in the adjudication process and the extent of that participation.
- b. Outline the rights and roles of both parties in the adjudication process, including:
 - i. notice of hearing(s) to both parties;
 - ii. an opportunity for both parties to present witnesses and other evidence, including:
 - 1. a description of the types of evidence that may or may not be presented, including but not limited to:
 - a. prohibiting questioning or evidence about the complainant's prior sexual conduct with anyone other than the alleged perpetrator

- b. clarifying that evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual misconduct
 - 2. if the school conducts a hearing, and generally allows for cross-examination, a description of alternative methods that preclude the respondent from personally cross-examining the complainant
 - iii. extension of any other rights given to the alleged perpetrator to the complainant.
- c. Explain the possible results of the adjudication process, including:
 - i. sanctions;
 - ii. remedies/accommodations for the victim;
 - iii. additional remedies for the school community.
- d. Outline how the parties will be informed of the results of the adjudication, including:
 - i. simultaneous written notice to both parties of the outcome of the complaint and the option to appeal, if applicable;
 - ii. a statement that the school will not require a party to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the redisclosure of information related to the outcome of the proceeding.
- e. Describe the appellate procedures (if appeals are permitted), including grounds for appeal, standards of review, the person/entity that will decide appeals, and the applicable reasonably prompt time frames.

9. Prevention and Education

Outline the school's approach to prevention, including type and frequency of prevention programming and educational/outreach activities. Include bystander intervention and programs to educate students about the school's sexual misconduct policies.

10. Training

- a. Outline how faculty and staff are trained and on what issues.
- b. At a minimum, the Title IX coordinator, law enforcement, "responsible employees," victim advocates, and anyone else who is involved in responding to, investigating, or adjudicating sexual misconduct must receive adequate training.

Appendix 3 - Extension Request



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UNIVERSITY SENATE

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<http://www.senate.umd.edu>

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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APPENDIX A

I. OVERVIEW

- Time Frame for Resolution
- Filing A Complaint
- Notification to Complainant
- Initial Assessment of Complaint
- Protective Interim Measures
- Role of Support Person, Attorney and Non-Attorney Advocate
- Notification to the Respondent
- Voluntary Resolution

II. SEXUAL MISCONDUCT INVESTIGATION

- Notice of Investigation
- Investigation Timeline
- Special Considerations
- Review of Draft Investigation Report
- Investigative Finding and Notification
- Outcome Conference

III. IMPOSITION OF SANCTIONS

- Sanctions the Impact A Student's Status
- Sanctions That Do Not Impact A Student's Status
- Records of Student Discipline and Effect of Withdrawal

IV. REMEDIES

V. ADJUDICATION OPTIONS

- Imposition of Final Finding, Sanction, and Remedy
- Administrative Review of An Investigative Finding of No Policy Violation
- Adjudication by Standing Review Committee: Review of An Investigative Finding That a Policy Violation Occurred
- Adjudication by Standing Review Committee: Review of Recommended Sanction Only
- Standing Review Committee
- Standing Review Committee Conference Procedures
- Notice of Standing Review Committee Conference Outcome

VI. APPEAL

- Grounds for Appeal
- Considerations

VII. FINAL OUTCOME

- Post Resolution Follow-Up

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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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VIII. FINAL OUTCOME

A. Post Resolution Follow-Up

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).

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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.

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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.

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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.

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I. OVERVIEW

These procedures set forth in Appendix A accompany the University of Maryland (UMD) Sexual Misconduct Policy (the "Policy") and are the exclusive procedures that govern the handling of all reports or complaints of sexual misconduct against UMD students. Key terms used herein are defined in the Policy. For example, sexual misconduct is an umbrella term defined in the Policy 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 participate or decline to participate in the complaint process. As appropriate, the Title IX Officer, and the Director of Student Conduct, will determine whether the Investigation and University Resolution processes will proceed without the participation by one or both parties. A lack of participation by a party does not necessarily preclude a finding of a Policy violation or the imposition of appropriate disciplinary action.

Reference herein to the Title IX Officer includes the Director of the Office of Civil Rights and Sexual Misconduct and designees. Reference herein to the Director of Student Conduct includes the Assistant Director of Resident Life for Student Conduct in the Office of Rights and Responsibilities and designees.

II. RIGHTS TO SUPPORT PERSON AND ADVISOR

Throughout the process, any party may be accompanied to any meeting related to an investigation and resolution of a complaint by up to two (2) other people: (1) a Support Person, and (2) an Advisor. Meetings include, but are not limited to, the following meetings concerning a report: meetings with OCRSM, meetings with OSC, investigative interviews, document reviews, Disciplinary Conferences with the Director of Student Conduct, Standing Review Committee Conferences, alternative resolutions and sanction meetings.

A. Support Person

A party 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 evidence 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. A Support Person shall not be an active participant and the parties must speak for themselves.

B. Advisor

A party may choose to be assisted by an Advisor of their choice, including an attorney, at their own initiation and expense. The Advisor is a non-participant who is present to provide advice and consultation to a party. An Advisor cannot be a witness or provide evidence in a 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 parties must speak for themselves. An Advisor may not delay, or otherwise interfere with, the University's process.

C. Party Obligations

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Throughout the process, University staff and participants will communicate and correspond directly with the parties, not through a Support Person or Advisor. Parties are responsible for having Support Persons and Advisors follow the non-party participation requirements below. When a party wishes to have a Support Person or Advisor accompany them to a meeting, the individual must notify OCRSM or OSC in advance. Parties are also responsible for making sure appropriate authorization exists for the University to communicate non-party participation requirements below to any Support Person or Advisor.

D. Non-Party Participant Requirements

All Support Persons and Advisors must review the materials about the scope of their respective roles, prior to accompanying a party to any meeting or other activity. These materials may be obtained from the OSC, or online at the OCRSM website, www.umd.edu/ocrsm/. This is to ensure the Support Persons and Advisors are informed about the process and their respective roles. All parties, Support Persons and Advisors are expected to understand their roles and adhere to the University's expectations regarding decorum and privacy considerations.

III. REPORTING

Complaints and other reports of sexual misconduct against a student may be made to the following:

- 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 Student 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 working with OSC and other campus offices to facilitate Interim Protective Measures that provide for the safety of the parties and the campus community, when appropriate.

A Complainant may choose to make a report to the University to pursue resolution under these Procedures, and may also choose to make a report to law enforcement. A Complainant may pursue either of these options or both options at the same time. The criminal process and the University's internal process under these Student Procedures are separate and independent. A Complainant who wishes to pursue criminal action should contact campus police or external law enforcement directly. See Policy Section VII for more information on criminal reporting.

The University recognizes that deciding whether to report sexual misconduct and proceed with a formal complaint under these Student Procedures is a personal decision that may evolve over time. While prompt reporting is strongly encouraged, there is no time limit for reporting a complaint of sexual misconduct. The OCRSM and the OSC will coordinate to provide support and assistance to each Complainant in making important decisions related to reports of sexual misconduct. Consistent with the goal of safety for all community members, the University will make every effort to respect a Complainant's autonomy in making their own personal decisions

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after reporting sexual misconduct. However, when appropriate, the University, through the OCRSM, retains the right to initiate a formal complaint on its own, independent of any individual's decision as to how they wish to proceed.

IV. COMPLAINT INTAKE PROCESS

A. Notification to the Complainant

Upon receipt of a complaint, the OCRSM will ensure that the Complainant is provided with a copy of the Policy and Student Procedures and informed of their rights and responsibilities. Either the OSC or the OCRSM will provide information to the Complainant about the University's internal, administrative complaint process and review with them their respective rights and responsibilities. The Complainant will be informed of available community and campus resources and services; their right to a Support Person and the Support Person's role; their right to an Advisor and the Advisor's role; their right to file a report with law enforcement, or not; and the University's prohibition against retaliation. The Complainant will have an opportunity to ask questions and seek additional information.

B. Requests for Confidentiality

Where possible, the OCRSM will take action consistent with the Complainant's expressed wishes regarding confidentiality. The University's ability to fully investigate and respond to a complaint may be limited if the Complainant requests that their name not be disclosed to the Respondent or declines to participate in an Investigation. When a Complainant requests their 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. The University retains the right to proceed with a complaint as necessary to meet its obligations, and in some cases, would not be able to honor a request for confidentiality.

C. Initial Assessment of Complaint

When the University receives a 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 the OSC to gather information that will enable the OCRSM, in consultation with other offices, as appropriate, to:

- Assess the nature and circumstances reported in the complaint;
- Assess the safety of the Complainant and of the campus community;
- Implement any appropriate interim protective measures;
- Assess for pattern evidence or other similar conduct by the Respondent as relevant to the safety assessment;
- 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; and

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- Assess the reported conduct for possible referral to the University of Maryland Police Department (UMPD) for a timely warning under the Clery Act.

At the conclusion of the Initial Assessment, the OCRSM will determine the appropriate next step, including but not limited to: no further action, the imposition of Interim Measures, Alternative Resolution, and/or proceed with an investigation.

When the Initial Assessment determines the reported conduct does not constitute a potential violation under this Policy, but may violate other University policy, the complaint may be referred to another appropriate University official for review and resolution.

Where the Initial Assessment reveals that the University lacks jurisdiction over the Respondent, the University will take available and reasonable steps to address the Sexual Misconduct, prevent its recurrence, and address its effects at the University.

D. Interim Protective Measures

Based on the nature and circumstances of the complaint, the Director of Student Conduct, after consultation with 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. The Director of Student Conduct will promptly inform the Respondent (if they are a member of the University community) of any interim protective measures that will directly impact the Respondent and provide an opportunity for the Respondent to respond.

The Director of Student Conduct retains discretion to impose and/or modify any interim protective measures based on all available information. Interim protective measures will remain in effect until the University's final resolution of the sexual misconduct complaint. A party may challenge the imposition of interim protective measures, or a decision not to impose interim protective measures, by contacting the Director of Student Conduct to address any concerns. Information about interim protective measures can be found on pages 11-12 of the Policy.

V. RESOLUTION PROCESSES

A. Timeframe for Resolution

Consistent with the goal of maximizing educational opportunities, remedying the effects of Prohibited Conduct and promoting campus safety while minimizing the possible disruptive nature of the process, the OCRSM and OSC will strive to resolve all complaints within sixty (60) business days of receipt. In general, the investigation phase may last approximately four to five weeks and the adjudication phase may last approximately another four to five weeks. Good faith 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 the OCRSM or OSC.

B. Alternative Resolution Process

In some cases, the Complainant may seek Alternative Resolution in lieu of investigation and adjudication.

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Alternative Resolution is a process whereby remedies and interventions may serve to address the alleged Prohibited Conduct without proceeding to an investigation. Alternative Resolution is not appropriate for complaints involving sexual violence, including sexual assault. The parties may decide not to proceed with Alternative Resolution and may request an investigation and adjudication at any time.

The Title IX Officer has the discretion to determine whether a complaint is appropriate for Alternative Resolution and retains discretion to terminate an ongoing Alternative Resolution process at any time.

The purpose of Alternative Resolution is to take appropriate action by imposing individual and community interventions and remedies designed to maximize the Complainant's access to educational, extra-curricular and/or employment activities at the University. Any combination of interventions and remedies may be utilized, including but not limited to:

- Increased monitoring, supervision and/or security at locations or activities where the Prohibited Conduct occurred or is likely to reoccur;
- Targeted or broad-based educational programming or training for relevant individuals or groups;
- Academic and/or housing modifications for Student Complainants;
- Workplace modifications for Complainants;
- Completion of projects, programs, or requirements designed to help the manage behavior, refrain from engaging in Prohibited Conduct and understand why the Prohibited Conduct is prohibited;
- Compliance with orders of no contact that limit access to specific University areas or forms of contact with particular persons; and
- 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.

The imposition of remedies or interventions obtained through Alternative Resolution may be achieved by an agreement acceptable to the parties and University. In such cases the terms of the agreement are implemented and the matter is resolved and closed. In cases where an agreement is not reached, and the Title IX Officer determines that further action is necessary, or if a Respondent fails to comply with the terms of the Alternative Resolution, the matter may be referred for Investigation and Adjudication under these Procedures.

Where the Complainant and Respondent and University have reached an Alternative Resolution agreement, the parties will be provided a written notice of the outcome. The Title IX Officer will maintain all records of matters referred for Alternative Resolution.

C. Investigation Process

When the Initial Assessment determines the University has jurisdiction over the Respondent and the alleged conduct, and where Alternative Resolution is not appropriate, an investigation will occur.

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1. Standard of Review

In making a determination about whether a Policy violation has occurred, the standard of review is preponderance of the evidence. A preponderance of the evidence means “it is more likely than not.” Thus, at the conclusion of the investigation phase, a recommended finding will be made to as to whether, based on the information gathered, it is more likely than not that the reported conduct constituted Prohibited Conduct in violation of the Policy.

2. Preliminary Meeting

Prior to an investigation, the OCRSM and/or OSC will notify both parties and require their attendance (separately) at a preliminary meeting with OSC. The purpose of the meeting is to ensure students are provided adequate information about the investigation and adjudication process, and have an opportunity to ask and receive answers to any questions they may have. When a party does not attend the preliminary meeting with OSC, the University shall proceed with an investigation, noting the party’s lack of attendance at the preliminary meeting.

a. Notice of Potential Policy Violation and Investigation

At the preliminary meeting, the Respondent will be informed verbally and in writing of: the circumstances of the alleged incident (which generally will include, to the extent known, the name of the Complainant and the date, time and location), the Prohibited Conduct alleged as defined by the Policy, and the range of potential sanctions associated with the Prohibited Conduct. If a Respondent does not attend the preliminary meeting, the University will provide the Respondent with the information in writing. A copy of the Notice of Potential Policy Violation and Investigation will also be provided to the Complainant.

Both parties will also be informed during the preliminary meeting that they will have an opportunity to be heard regarding the complaint during the investigation process, including the opportunity to be heard during an interview with an investigator regarding the alleged sexual misconduct.

b. Notice of Rights and Responsibilities

Both parties will be provided with a copy of the Policy and Student Procedures and informed verbally (if present at the Preliminary Meeting) and in writing of their rights and responsibilities pursuant to the Policy. This includes but is not limited to: no contact directives (and provided a copy), prohibitions against retaliation and guidance about reporting any retaliatory conduct, and available community and campus resources and services.

3. Role of the Investigator

The Title IX Officer will designate an Investigator(s) from the OCRSM and/or an external investigator to conduct a prompt, thorough, fair, and impartial investigation. All investigators will receive annual training on issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence and stalking; and how to conduct a fair and impartial investigation that provides parties with notice and a meaningful opportunity to be heard and protects the safety of complainants and the University community while promoting accountability.

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4. Overview of the Investigation

The investigation is an impartial fact-gathering process. It is an important stage of the process in which both parties have an opportunity to be heard regarding the complaint. During the investigation the parties will each have an opportunity to meet and speak with the Investigator, provide any relevant information about the reported conduct, and identify persons they believe the Investigator should speak with because they have relevant information. The Investigator will speak separately with both parties and any other individuals who may have relevant information. The Investigator will also gather any available physical evidence or documents, including prior statements by the parties or witnesses, communications between the parties, email messages, social media materials, and other records, as appropriate and available.

a. Special Considerations

Information related to the prior sexual history of either party is generally not relevant to the determination of a Policy violation. However, prior sexual history between the parties may be relevant in very limited circumstances. For example, where there was a prior or ongoing consensual relationship between the parties, and where Consent is at issue in the case at hand, evidence as to the parties' prior sexual history as it relates to Consent may be relevant to assess the manner and nature of communications between the parties. As noted in the Policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute Consent. Sexual history will never be used for purposes of illustrating either party's individual character or reputation. The Investigator will determine the relevance of prior sexual history and inform the parties if information about the parties' sexual history with each other is deemed relevant.

At the discretion of the OCRSM, multiple reports may be consolidated in one investigation if the information related to each incident is relevant in reaching a determination. 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 investigation and resolution of complaints.

b. Draft Report

At the conclusion of the investigation, the Investigator will draft a written investigation report that summarizes the information gathered (including, but not limited to, the names of witnesses and summaries of their statements), and synthesizes the areas of agreement and disagreement between the parties.

c. Notice of Opportunity to Review the Draft Investigation Report

Before the investigation report is finalized, the parties will be given an opportunity to review and respond to the draft report. Upon receipt of notice to review the draft report, the parties will each have five (5) business days to review the report and all underlying documents and submit comments, information and/or ask questions. If there is any new or additional information to be provided by either party, it must be presented to the Investigator at this time. If further investigation is warranted based on the comments, information and/or questions provided during the review period, the Investigator will continue the investigation, as needed.

d. Final Investigation Report

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Upon timely receipt of any additional information or comments from the parties or after the five (5) business day comment period has lapsed with no comments provided, and the investigation is complete, the Investigator will finalize the investigation report. The final investigation report will include a summary of all relevant information obtained in the course of the investigation, proposed findings of material fact, and a recommendation by the Investigator as to whether the information gathered establishes, by a preponderance of the evidence, a potential Policy violation by the Respondent.

Both parties will be contacted by the OSC, and directed to contact OSC to schedule separate meetings with the Director of Student Conduct to discuss next steps.

VI. ADJUDICATION

A. Meeting with Director of Student Conduct

The Director of Student Conduct will meet separately with each party to explain next steps and provide each party with a confidential copy of the final investigation report, including all attachments.

- When an investigation concludes with a recommended finding of a policy violation, and expulsion or suspension is a possible sanction, the matter will be referred automatically to the Standing Review Committee (SRC) for an administrative determination of the initial outcome.
- For all other recommendations, including those of no policy violation, the OSC will resolve the Complaint by facilitating a Disciplinary Conference.
- Determinations by the SRC or by OSC in a Disciplinary Conference shall be based on the preponderance of the evidence.

At the meeting, the Director of Student Conduct will explain the relevant process to each party, and inform each party of the date and time of the SRC Conference or Disciplinary Conference.

Each party will be allowed five (5) business days to submit a written response to the Final Investigation Report, which will be considered by the respective reviewer, i.e., the SRC or Director of Student Conduct during the SRC or Disciplinary Conference process, as appropriate. All written responses will be shared with the other party prior to the SRC review or Disciplinary Conference.

In order to protect the privacy of all individuals involved, all materials shared with the parties are considered confidential and should not be publicly disclosed or released.

B. Disciplinary Conference

The Director of Student Conduct facilitates Disciplinary Conferences. Each party will be given an opportunity to speak separately to the Director of Student Conduct in person and respond to the information presented in the final investigation report. The Director of Student Conduct will consider any written response to the final investigation report submitted by the parties before issuing a decision.

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The Disciplinary Conference decision shall be in writing, and will include Policy violation findings and a rationale for the decision. The Disciplinary Conference Decision shall be issued to both the Complainant and Respondent.

In the event that the Director of Student Conduct finds that a Respondent is responsible for Prohibited Conduct, the Director of Student Conduct shall determine an appropriate sanction and/or remedy, as described in Section VII below.

Before a sanction and/or remedy are issued, the parties shall have the opportunity to submit impact and mitigation statements, as described in Section VII below. Sanctions and remedies imposed as a result of a finding of responsibility for Prohibited Conduct after a Disciplinary Conference will not include expulsion or suspension. If either party disagrees with the outcome of the Disciplinary Conference, they may appeal pursuant to Section VIII below.

C. Standing Review Committee (SRC) Conference

The role of the SRC is to review cases where a Policy violation could result in a sanction of suspension or expulsion. The SRC's role is to review all the available information, and determine, independent of the Investigator's recommendation, whether it is more likely than not that the reported Prohibited Conduct occurred, constituting a Policy violation.

The SRC is a five member body composed of at least three faculty or staff (at least one of whom is faculty) and at least one student who receive on-going training to serve in this capacity, including a Chair who facilitates the conference. SRC members are obligated to disclose to the OSC any known conflicts prior to participating in any specific SRC Conference. Conflicts or familiarity with the individuals involved in the matter that are disclosed to the OSC will automatically disqualify an individual SRC member from participation in any particular review.

Both parties will be notified of the date, time, and location of the SRC Conference. If either or both parties are not in attendance, the SRC Conference may proceed. The parties are not required to participate and the SRC may not draw any adverse inference from a decision by either party not to participate. The Investigator is required to attend all SRC Conferences. The SRC and/or a party may request the attendance of witnesses who provided information to the Investigator.

The SRC Conference offers the parties an opportunity to address the SRC members, in person, about the allegations, and have their respective questions asked and answered. The parties may address any information in the final investigation report and supplemental responses. The parties may not directly question each other or any witness, but may submit written questions (to the SRC Chair) for the SRC to ask the Investigator, the other party, and/or any witnesses who are present. The SRC may exercise reasonable discretion to decline to ask questions submitted by the parties that are harassing, unnecessarily repetitive or irrelevant.

1. SRC Conference Format

The SRC Conference generally begins with the SRC Chair introducing the purpose of the conference, identifying all persons present, and then inviting the Investigator to summarize the investigation and explain the evidence relevant to the alleged Prohibited Conduct in violation of the Policy. The SRC may pose questions directly to the Investigator, the parties, and any other witnesses. When the SRC has concluded its questioning, the Chair will invite the parties to

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submit written questions to be asked by the SRC of any of the witnesses, parties, or the Investigator. When all questioning is concluded, the parties will be given an opportunity to make brief closing statements. The SRC will then adjourn and the parties are excused.

If and when appropriate, the SRC, in its discretion, may suspend its review and request further investigation. Once the Investigator has concluded any further investigation, and if the recommendation by the Investigator is that there is sufficient evidence to support a finding of Prohibited Conduct in violation of the Policy (using a preponderance of the evidence standard), another SRC Conference will be scheduled. The OSC will use best efforts to complete this process as promptly as possible, and will notify the parties of the status, as appropriate.

2. SRC Decision

The SRC will issue a written decision based on its review. The decision is determined by majority vote. The SRC decision will include findings of relevant fact and a finding as to whether the Respondent engaged in the Prohibited Conduct in violation of the Policy, or not (based on a preponderance of evidence standard).

If the SRC finds the Respondent responsible for a Policy violation by a preponderance of the evidence, the matter will proceed through the impact/mitigation statement phase, as well as the sanctioning phase below.

If the SRC does not find the Respondent responsible for a Policy violation based on a preponderance of the evidence, the Complainant may appeal the SRC Decision pursuant to section VIII below. If there is no appeal, the case is resolved and notice of the final outcome will be issued.

VII. REMEDIES AND SANCTIONS

Any Disciplinary Conference or SRC decision will be sent by the OSC to the parties. Where there is a finding of responsibility, both parties have the opportunity, within three (3) business days from the date of receipt of the decision, to submit statements for consideration by the Director of Student Conduct in determining an appropriate sanction.

A. Impact and Mitigation Statements

The Complainant may submit a written statement describing the impact of the Prohibited Conduct on the Complainant, and/or request to meet with the Director of Student Conduct to provide their statement verbally.

The Respondent may submit a written statement explaining any factors the Respondent believes should mitigate or otherwise be considered in determining the sanction(s), and/or request to meet with the Director of Student Conduct to provide their statement verbally.

The Director of Student Conduct will consider any impact and mitigation statements in determining the remedies and sanctions to be imposed. The parties' respective statements will not be shared with the other party.

B. Remedies

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The Title IX Officer, in consultation with the OSC, will identify reasonable short-term and/or long-term remedies to address the effects of the conduct on the Complainant, prevent its reoccurrence, 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, such as training for specific audiences, 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, and/or retaking of an exam.
- **Academic accommodations** such as: retroactive drop from a particular class, retroactive withdrawal from a semester, policy exemption requests, and/or tuition reimbursement.
- **Additional remedies** such as: no contact orders, denial of access, housing accommodations, schedule changes, counseling and/or referral to outside agencies.

C. Sanction Considerations

The imposition of disciplinary 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. Disciplinary sanctions may include educational, restorative, and rehabilitative components, such as completion of an educational project, 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 more severe sanctions, including suspension or expulsion from the University.

The Director of Student Conduct will determine the appropriate disciplinary sanction in every sexual misconduct case. In reaching this determination, the following factors will be considered:

- The nature and degree of 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 relevant misconduct by the Respondent, including the Respondent's relevant prior discipline history;
- Respondent's acceptance of responsibility for the conduct;
- 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.

D. Sanctions

When the Director of Student Conduct concludes that a sanction 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 to determine whether the

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Respondent poses a serious disruption to the learning environment or a continuing danger to other members of the University community or University property. Interim suspension may be imposed at this point pending conclusion of the Appeal, where appropriate. Interim protective measures already in effect will continue pending Appeal. Disciplinary sanctions for Policy violations 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 certain behavior is inappropriate.
- **“No Contact” Orders or Denial of Access.** 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. A permanent notation 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.
- **Expulsion.** The student is permanently separated from the University. A permanent notation will appear on the student’s transcript. The student will also be barred from the University premises.

E. Notice of Sanction

Once a sanction is determined, the OSC will issue written notification of the sanction to both parties, as allowed by law, and provide the parties with information about their rights to appeal, per Section VIII below. This constitutes the conclusion of the initial outcome phase.

VIII. APPEALS

The Complainant and Respondent may appeal the outcome of a Disciplinary or SRC Conference, including the sanction issued under either process. The scope of the appeal is limited to the grounds set forth below. Mere dissatisfaction with the decision and sanction is not a valid basis for appeal. An appeal must be submitted in writing within five (5) business days of the date of receipt of the notice of sanction. If an appeal is received by the OSC, the other party will be notified and given five (5) business days from the date of receipt of the notice to respond. Responses shall be submitted directly to the OSC. Appeals filed by each party will be considered together in one appeal review process. All appeal documents will be shared with the other party.

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If neither party submits an appeal, the decision and sanction are final after five (5) business days. Appeals submitted after five (5) business days shall be denied.

A. Grounds for Appeal

Grounds for appeal shall be limited to:

1. Substantial Procedural Error

Specified procedural errors or errors in interpretation of University policy were so substantial as to effectively deny a Complainant or a Respondent notice or a fair opportunity to be heard. Mere deviations from procedures that were not so substantial as to deny a Complainant or Respondent notice or a fair opportunity to be heard will not be a basis for sustaining an appeal.

2. New Evidence

New and significant relevant information has become available which a reasonably diligent person could not have discovered during the Investigation phase and/or prior to the issuance of the Disciplinary Conference or SRC Decision, as applicable.

3. Sanction

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 or suspension.

B. Considerations

Appeals are not intended to allow for a second review of the facts of the case and determination of 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.

When the basis of the Appeal is new evidence, the Director of Student Conduct, in consultation with the Title IX Officer, will determine whether the information is new and was unavailable at the time of the investigation. If the information is determined not to be new, the Appeal will be denied. If the information is determined to be new and unavailable at the time of the investigation, it will be provided to the Appellate Body for review and determination whether the new information could change the outcome of the SRC decision. If it is determined that the outcome could be impacted by the new evidence, the case will be sent back to the SRC.

C. Appellate Body

The University Senate Student Conduct Committee (SCC) is the designated Appellate Body for all cases involving sexual misconduct. The SCC Appellate Body is composed of three (3) members from the SCC who have had no previous involvement with the case, and have been trained to review such cases. Deference shall be given to the determinations of the SRC. The SCC Appellate Body considers any written appeal submission and, based on its review, may:

- Affirm the SRC Decision and the sanction imposed;
- Affirm the SRC Decision and reduce, but not eliminate, the sanction;
- Remand the case to the SRC, in accordance with Section VI, above.

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The SCC Appellate Body Chair will render a written decision on the appeal to the OSC within ten (10) 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 require approval by the Vice President for Student Affairs.

IX. FINAL OUTCOME

After all review processes are concluded (or when the time for an appeal has passed with no appeal submitted, whichever is later), the OSC will promptly notify the Complainant and Respondent, in writing, of the final outcome of the sexual misconduct complaint.

X. RECORDS RETENTION

OSC and the Title IX Officer will maintain records of all complaints, investigations, adjudications, appeals and alternative resolutions arising under this Policy in accordance with the University's Records Retention and Disposal Schedule. Disciplinary records may be retained for longer periods of time or permanently, if so specified in the sanction.

XI. ACADEMIC TRANSCRIPTS AND EFFECT OF WITHDRAWAL

Disciplinary sanctions of expulsion and suspension are permanently noted on a Respondent's academic transcript. When a Respondent requests their transcript, the existence of a pending Investigation is also noted. In the event 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 the University proceedings under the Policy, the University will continue to process the disciplinary action in the student's absence. When a Respondent withdraws before resolution of pending disciplinary charges, the Respondent is ineligible to return to the University until the disciplinary proceedings have been resolved. In the event the student graduates while an Investigation and Resolution is pending, issuance of the student's diploma will be withheld until the case is concluded. Academic transcripts will be withheld until the matter is resolved or marked "Disciplinary Action Pending."

XII. POST-RESOLUTION FOLLOW UP

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

END OF DOCUMENT