




University Senate CHARGE

Date:	February 9, 2015
To:	Gloria Aparicio Blackwell Chair, Staff Affairs Committee
From:	Donald Webster Chair, University Senate 
Subject:	Review of the Interim Sexual Misconduct Staff Procedures
Senate Document #:	14-15-26
Deadline:	November 6, 2015

The Senate Executive Committee (SEC) requests that the Staff Affairs Committee review the attached interim Staff 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 staff 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 staff 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 Staff Sexual Misconduct Investigation & Adjudication Procedures (Appendix B of the University of Maryland Sexual Misconduct Policy & Procedures (VI-1.60[A])).
2. Consult with the University's Title IX Coordinator, a representative of University Human Resources, and Staff Relations (as needed) regarding the development of the interim staff procedures.

3. Review similar staff procedures for complaints of sexual misconduct at our peer institutions and other Big 10 and USM institutions.
4. Review the University's past process for handling staff sexual misconduct cases.
5. Review the interim University of Maryland Sexual Misconduct Policy & Procedures ([VI-1.60\[A\]](#)) and consider whether the proposed staff procedures align with the University's interim policy, USM policy, and VAWA guidelines.
6. Consult with the Senate Faculty Affairs Committee regarding any potential revisions to the faculty procedures.
7. Consult with the University's Office of General Counsel on any recommended revisions.
8. If appropriate, recommend whether the interim staff procedures should be revised.

We ask that you submit your report and recommendations to the Senate Office no later than November 6, 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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INTRODUCTION

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

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I. FILING A COMPLAINT

A complaint of sexual misconduct against staff should be made to the Office of Sexual Misconduct & Relationship Violence (OSM). The Complainant will be interviewed and asked to submit a signed written complaint. The Complainant will also be provided with Notice of her/his Rights and Responsibilities.

Disclosures of sexual misconduct to persons or entities other than those specifically listed as Confidential Resources in Section VI of the Policy are not confidential. Any report of sexual misconduct that is brought to the attention of a Responsible University Employee (“RUE”) as defined in Section III of the Policy must be reported promptly to the Title IX Officer in the OSM. An RUE includes any University administrator, supervisor, faculty member, campus police, coach, trainer, resident assistant¹ or non-confidential first responder who has the authority to take action to redress sexual misconduct or whom a student or staff person could reasonably believe has such authority or duty.

No persons other than the Title IX Officer or designee are authorized to investigate allegations of sexual misconduct in violation of this Policy.

A. Initial Assessment

Upon receipt of a complaint of sexual misconduct, the Title IX Officer or designee, will conduct an Initial Assessment to determine whether the complaint may constitute a violation of the Policy, and whether further action is warranted based on the alleged conduct. The Initial Assessment will be based on the following considerations:

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

B. Interim Measures

Based on the nature and circumstances of the complaint, the Title IX Officer may authorize Interim Measures in consultation with the supervisor or unit head/administrator(s) and/or Director of University Human Resources, or designee, as necessary, on a need-to-know basis.

¹ Under the Policy, for purposes of reporting, a student who is a resident assistant is an RUE and is obligated to report sexual misconduct that comes to her/his attention to the Title IX Officer. If a student who is a resident assistant is the subject of allegations of sexual misconduct, the complaint is handled under the Student Investigation and Adjudication Procedures (see Appendix A).

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II. COMPLAINT RESPONSE

Following the Initial Assessment, the Title IX Officer or designee will determine whether to proceed with an investigation, take no action, or refer the report back to the relevant unit head and/or supervisor to be considered as a personnel matter because it does not rise to the level of Prohibited Conduct as defined under the Policy in Section IV, pages 4-6. If the complaint is referred back to the unit or office from which it originated, the Complainant will be notified.

OSM may proceed with an investigation to ensure the safety and well being of the Complainant and/or others in the campus community even in the absence of a written complaint.

A. Sexual Misconduct Investigation

Following the Initial Assessment, and in consultation with the Complainant, the OSM will initiate a prompt, thorough, and impartial Investigation of the conduct that constitutes a potential violation of the Policy. 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.

OSM will take immediate and appropriate steps to eliminate sexual misconduct in violation of the Policy, address its affects and prevent its recurrence. 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.

1. Notice of Investigation

The Title IX Officer or designee will send the Complainant and the Respondent a written *Notice of Investigation*. Once the *Notice of Investigation* has been delivered to the parties, the Investigation phase begins. The *Notice of Investigation* will contain a summary of the allegations at issue, the range of potential violations under the Policy, and the range of potential disciplinary sanctions and/or administrative and other remedies. 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.

Along with the *Notice of Investigation*, the Respondent will receive a *Notice of Rights and Responsibilities*.

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 and state law and University policy.

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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 Special Investigator may gather or receive information that is relevant to the determination of an appropriate sanction or remedy, including information about the impact of the alleged incident on the parties. The Special Investigator will also gather any available physical or documentary evidence, including prior statements by the parties or witnesses, any communications between the parties, email messages, social media materials, text messages, and other records as appropriate and available.

Members of the University community are expected to cooperate with the Investigation.

B. Notice of Review Option

At the conclusion of the Investigation, the Special Investigator will prepare a draft written report that summarizes the information gathered, synthesizes the areas of agreement and disagreement between the parties with any supporting information or accounts. Prior to finalizing the Investigation Report and before reaching a finding, the Special Investigator will provide the Complainant and Respondent an opportunity to review the draft Investigation Report (absent a Finding).

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 Review Option* to review the draft Investigation Report. This is the final opportunity for the parties to identify any additional information or witnesses and review their statements for accuracy. Both parties will be provided electronic password protected access to the report. 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 Standing Review Committee (SRC).

C. OSM Investigation Outcome

Once the draft Investigation Report is reviewed by the parties and any additional information is incorporated, or after the five (5) business day comment period has lapsed without comment by either party, the Special Investigator will finalize the Investigation Report and make a finding as to whether there has been a violation of the Policy.

The finding will be based on the Special Investigator's assessment of the evidence gathered in the course of the investigation, using a standard of preponderance of evidence (e.g., 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 rely on information regarding the employee's prior disciplinary history and prior criminal history. All information relied on by the Special Investigator shall be included in the final Investigation Report. The OSM Finding will be appended to the Investigation Report and will constitute the OSM Investigation Outcome. The OSM Investigation Outcome will then be sent to

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the Standing Review Committee for an independent evaluation.

D. Independent Review by the Standing Review Committee

The Standing Review Committee (SRC) is an independent body, composed of five (5) persons made up of a combination of faculty, staff and students with a minimum of three (3) staff. All members of the SRC are adequately trained and are qualified to review findings of sexual misconduct policy violations and grounds for appeal related to those findings.

The Standing Review Committee will conduct an independent assessment of the OSM Investigation Outcome and determine whether there has been a violation of the Policy. The SRC may affirm or reject the finding of the OSM Outcome regarding the policy violation, and/or return the OSM Outcome to the Special Investigator to conduct additional investigation before completing its review. All SRC decisions require a super majority vote (4-1) and shall be accompanied by an explanation of the SRC's stated rationale for the decision.

The SRC will have five (5) business days to make a determination as to whether there is a violation of the Policy. In the event the SRC rejects the OSM Finding and requests additional investigation, the SRC shall review the revised OSM Outcome upon completion of any additional investigation by the Special Investigator. The five (5) day timeline may be extended by the Title IX Officer to accommodate any additional investigation and reconsideration by the SRC, as needed.

The SRC shall issue its determination (SRC Finding) to the Title IX Officer.

E. Notice of Standing Review Committee Finding

The Title IX Officer or designee will then issue a formal Notice of SRC Finding to both parties, separately and simultaneously. (In the event the investigation was initiated by the OSM without a formal Complainant, only the Respondent shall be notified.) The Notice of SRC Finding shall include a reference to the specific prohibited conduct at issue, a summary of the investigation findings and the SRC's stated rationale for its decision. Copies of the Notice of SRC Finding shall also be sent to the appropriate supervisor and unit head, on a need-to-know basis, and to the Director of University of Human Resources, or designee.

III. APPEAL

Either party may appeal the SRC Finding to the SRC Appellate Body. Mere dissatisfaction with the outcome 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 SRC Finding to OSM, using the *Notice of Appeal form*. The scope of the appeal is limited to three permissible grounds (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 OSM. Appeals filed by each party will be considered together in one appeal review process. Receipt of any written appeals will be acknowledged in writing by the OSM.

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A. Grounds for Appeal

Grounds for appeal shall be limited to:

- Procedural Error: A violation of procedural due process means that the SRC Finding was negatively influenced by a failure of the Special Investigator and/or 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 Finding was based upon an illegal or constitutionally impermissible consideration (e.g. party's gender, race, age, national origin, sexual orientation or exercise of first amendment rights).

If neither party submits an appeal, the SRC Finding becomes final after five (5) business days. Once an SRC Finding becomes final, the Title IX Office will issue a formal Notice of Policy Violation as described in Section D, below. Appeals submitted after five (5) business days will be denied.

B. Considerations

In any request for an appeal, the burden of proof lies with the party requesting the appeal. Appeals are not intended to allow for a rehearing of the complaint or a de novo investigation by the SRC Appellate Body. A review of the matter will be prompt and narrowly tailored to the specific grounds requested for appeal. In most cases, appeals are confined to a review of the written record and the pertinent documentation underlying the appeal. 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 deemed appropriate.

C. Standing Review Committee Appellate Body

The SRC Appellate Body is composed of three (3) members from the Standing Review Committee who did not participate previously in a review of the case. Depending on the basis of the requested appeal, the SRC Appellate Body may:

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

1. Notice of Appeal Outcome

An Appellate conference will be convened before a newly constituted SRC Appellate Body when the procedural or substantive error cannot be corrected by returning the matter to the

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original SRC. The SRC Appellate Body Chair will render a written decision on the appeal referred to as the *Notice of Appeal Outcome*, within ten (10) business days from the date the OSM receives all appeal documents. SRC Appellate determinations must be unanimous. In the event the SRC Appellate Body is unable to reach a unanimous decision, the appeal is deemed denied and the SRC Finding is affirmed. All SRC Appellate Body decisions are final and will be communicated to the parties via the Office of Sexual Misconduct.

D. Final Outcome Notice

After the SRC Finding becomes final and all appeals, if any, are exhausted, the Title IX Officer or designee shall issue a Final Outcome Notice to both parties, separately and simultaneously, in writing, and in person, when possible. Issuance of the Notice completes the investigation and adjudication of the complaint under this Policy.

IV. DISCIPLINE AND ADMINISTRATIVE OR OTHER REMEDIES

Discipline and/or administrative and/or other remedies may be imposed if the Final Outcome Notice reflects a Policy violation. In such an event, the appropriate supervisor and unit head, in consultation with other relevant administrators, as needed, shall consider the following to determine what type of discipline and/or administrative and/or other remedies is most appropriate:

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

Discipline, remedies and other administrative action may include, but is not limited to, the following:

- Unit transfers;
- Reassignment of duties;
- Mandatory individualized sexual misconduct training;
- Oral Reminders;
- Written Reminders/Letters of Reprimand;
- Suspension without Pay;
- Suspension Pending Charges of Removal; and
- Termination

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V. GRIEVANCE RIGHTS

Employees may grieve disciplinary action depending on the rights afforded to them based on their employee status. Employees may not grieve administrative and/or other remedies that do not constitute formal disciplinary action.

A. Exempt Employees

Regular exempt employees found to have violated the Sexual Misconduct Policy may be terminated pursuant to VII-1.22 Policy on Separation for Regular Exempt Employees at <http://www.president.umd.edu/policies/2014-VII-122.html> either under *Section III Termination by Period of Notice* or under *Section IV Termination for Cause*.

A grievance of a termination action may be made pursuant to VII-8.00 USM Policy on Grievances for Exempt and Nonexempt Staff Employees at <http://www.usmh.usmd.edu/regents/bylaws/SectionVII/VII800.html> and VII-8.10 USM Policy on Special Action Appeals for Classified Employees at <http://www.usmh.usmd.edu/regents/bylaws/SectionVII/VII810.html>.

B. Nonexempt Employees

Regular nonexempt employees found to have violated this Policy may be terminated in accordance with VII-8.00 USM Policy on Grievances for Exempt and Nonexempt Staff Employees at <http://www.usmh.usmd.edu/regents/bylaws/SectionVII/VII800.html> and VII-8.10 Policy on Special Action Appeals for Classified Employees at <http://www.usmh.usmd.edu/regents/bylaws/SectionVII/VII810.html>.

C. Contingent I and II Employees

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

D. Staff with Vested Status

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

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VI. FINAL OUTCOME

A. Records Retention

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

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

B. Additional Notification Following Any Grievance Initiated by the Respondent

After the completion of any grievance process initiated by the Respondent as a result of a personnel action taken based on a violation of this Policy, the Title IX Officer or designee will promptly notify the Complainant of any modification of the Final Outcome, except as prohibited by State or Federal law.

END OF DOCUMENT