



**University Senate  
TRANSMITTAL FORM**

<b>Senate Document #:</b>	14-15-27
<b>Title:</b>	Review of the Interim Sexual Misconduct Faculty Procedures
<b>Presenter:</b>	KerryAnn O’Meara, Chair, Senate Faculty Affairs Committee
<b>Date of SEC Review:</b>	April 19, 2016
<b>Date of Senate Review:</b>	April 28, 2016
<b>Voting (highlight one):</b>	<ol style="list-style-type: none"> <li>1. On resolutions or recommendations one by one, or</li> <li>2. In a single vote</li> <li>3. To endorse entire report</li> </ol>
<b>Statement of Issue:</b>	<p>In fall 2014, the Office of Civil Rights &amp; Sexual Misconduct (OCRSM) and the University administration developed interim procedures for resolving cases of sexual misconduct brought against faculty and staff at the University. The procedures were approved on an interim basis in January 2015. In February 2015, the Senate Executive Committee (SEC) charged the Faculty Affairs Committee (FAC) with review of the interim University of Maryland Faculty Sexual Misconduct Investigation &amp; Adjudication Procedures, Appendix C of the University of Maryland Sexual Misconduct Policy &amp; Procedures.</p>
<b>Relevant Policy # &amp; URL:</b>	<p>VI-1.60(A) University of Maryland Sexual Misconduct Policy &amp; Procedures – Appendix C  <a href="http://umd.edu/policies/docs/VI-160A.pdf">http://umd.edu/policies/docs/VI-160A.pdf</a></p>
<b>Recommendation:</b>	<p>The Faculty Affairs Committee recommends that the Faculty Sexual Misconduct Complaint Procedures (Appendix C of VI-1.60[A] University of Maryland Sexual Misconduct Policy &amp; Procedures) be amended as indicated in the procedures document immediately following the committee’s report.</p> <p>The Faculty Affairs Committee recommends that the Complainant be advised at the earliest point in the process when Alternative Resolution is appropriate in lieu of investigation and adjudication.</p> <p>The Faculty Affairs Committee recommends that any Notice of Disciplinary Action sent to Respondents under these Procedures state that the Faculty Ombuds Officer at UMD is available to assist faculty in understanding grievance policies and rights based on specific faculty status. In addition, the committee</p>

	<p>recommends that the Office of Faculty Affairs, the Office of Civil Rights &amp; Sexual Misconduct, and other appropriate units on campus ensure that their websites provide guidance for faculty on faculty grievance rights and policies, as they relate to the Faculty Sexual Misconduct Complaint Procedures.</p>
<b>Committee Work:</b>	<p>The Faculty Affairs Committee (FAC) began reviewing the charge in April 2015. The FAC reviewed peer institutions, reviewed the Senate Equity, Diversity, &amp; Inclusion (EDI) Committee’s work on the Sexual Misconduct Policy, and considered how sexual misconduct cases involving faculty have been handled in the past. The FAC consulted with the Associate Provost for Faculty Affairs, the Title IX Officer, and the Office of General Counsel (OGC) during its review. The FAC also sought to remain apprised of revisions to the Sexual Misconduct Procedures for staff and students through the parallel Senate committee processes.</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 faculty and staff were approved by the President on an interim basis on October 1, 2015. The FAC formed a subcommittee and began reviewing the new interim procedures by considering revisions to align with the procedures for staff and students and by highlighting substantive issues.</p> <p>During its review, the FAC focused on transparency and due process. The FAC raised concerns with transparency related to clarity between a report of sexual misconduct and a formal complaint, notification of the Respondent during the Initial Assessment, and appropriate communication with both parties throughout the process. Due process concerns focused on the right to appeal the Finding by the Special Investigator, support for the parties, and how existing University policies on grievances would be used to appeal the disciplinary action. In addition, the FAC noted that clarity was needed on the role of the Office of Faculty Affairs, the Senior Vice President and Provost, and the Faculty Ombuds Officer throughout the procedures. The Faculty Affairs subcommittee and members of the full committee met with the Title IX Officer and the Deputy General Counsel from the OGC in October to discuss the various aspects of the procedures.</p> <p>After review, the FAC approved the revised Faculty Sexual Misconduct Complaint Procedures and an administrative recommendation related to grievance rights via an email vote ending November 16, 2015. The FAC sent its recommendations</p>

	<p>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 FAC 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 FAC reviewed the revised interim procedures during March 2016. The FAC discussed issues related to Interim Protective Measures, the Initial Assessment, the Appeals process, and other areas of the procedures. After consultation with the OGC and OCRSM, and after deliberation as a committee, the FAC voted to approve its proposed revisions to the new interim procedures via an email vote, concluding April 11, 2016.</p>
<b>Alternatives:</b>	The Senate could reject the recommendations. However, the Senate would lose an opportunity to revise the Faculty Sexual Misconduct Complaint Procedures.
<b>Risks:</b>	There are no associated risks.
<b>Financial Implications:</b>	There are no financial implications.
<b>Further Approvals Required:</b>	Senate approval, Presidential approval.

# **Senate Faculty Affairs Committee**

## **Report on Senate Document # 14-15-27**

### **Review of the Interim Sexual Misconduct Faculty Procedures**

**April 2016**

#### **2015-2016 Faculty Affairs Committee Members**

KerryAnn O'Meara, Chair  
Michele Eastman, Ex-Officio President's Rep  
John Bertot, Ex-Officio Provost's Rep  
Bill Stuart, Ex-Officio CUSF Rep  
Jewel Washington, Ex-Officio Director of Human Resources Rep  
Roberto Celi, Faculty  
Leigh Ann DePope, Faculty  
Stefanie Kuchinsky, Faculty  
James McKinney, Faculty  
Shirley Micallef, Faculty  
Marc Pound, Faculty  
Ellin Scholnick, Faculty  
John Witzleben, Faculty  
Jianhua Zhu, Faculty  
Connie Jesse Lira, Exempt Staff  
Jeffrey Griswold, Graduate Student  
Deirdre Quinn, Graduate Student  
Nathaniel Zumbach, Undergraduate Student

## **BACKGROUND**

In fall 2014, the Office of Civil Rights & Sexual Misconduct (OCRSM) and the University administration worked together to develop interim procedures for resolving cases of sexual misconduct brought against faculty and staff at the University. The procedures were approved on an interim basis in January 2015 and subsequently sent to the Senate for review.

On February 9, 2015, in conjunction with the Senate's recent review of the interim University of Maryland Sexual Misconduct Policy (Senate Document #14-15-11), the Senate Executive Committee (SEC) charged the Senate Faculty Affairs Committee with review of the interim University of Maryland Faculty Sexual Misconduct Investigation & Adjudication Procedures, which appeared as Appendix C of the University of Maryland Sexual Misconduct Policy & Procedures. The SEC asked the Faculty Affairs Committee to make recommendations on whether these interim procedures are appropriate for the University (Appendix 1).

## **COMMITTEE WORK**

The Faculty Affairs Committee (FAC) began reviewing the charge in April 2015. The FAC reviewed peer institution information, reviewed the work of the Senate Equity, Diversity, & Inclusion (EDI) Committee on the Sexual Misconduct Policy (Senate Document #14-15-11), and considered how sexual misconduct cases involving faculty have been handled in the past at the University. The FAC consulted with the Associate Provost for Faculty Affairs, the Title IX Officer from the OCRSM, and the Office of General Counsel (OGC) during its review. The FAC also sought to remain apprised of concurrent revisions to the Sexual Misconduct Procedures for staff and students through the parallel processes in the Senate Staff Affairs and Student Conduct Committees.

In Spring 2015, the FAC reviewed peer institution information and supporting information, but due to other charges before the committee, did not begin revising the procedures in detail. 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, due to issues with the procedures found while conducting investigations in spring and summer 2015. The OCRSM determined that immediate changes were needed in order to streamline processes. Revised procedures for faculty and staff were approved by the President on an interim basis on October 1, 2015 (Appendix 3).

As it reviewed the new interim procedures, the FAC focused on a few key issues related to transparency and due process. The FAC raised concerns about a lack of clarity in the difference between a report of sexual misconduct and a formal complaint, notification of the Respondent during the Initial Assessment of a complaint, and appropriate communication with both parties throughout the process. Due process concerns included the lack of a process to appeal the Finding by the Special Investigator, the lack of support for both the Complainant and the Respondent during the process, and the appropriateness of using existing University policies on grievances to appeal the disciplinary action given as a result of the process. In addition, the FAC noted that additional clarity was needed in the role of the Office of Faculty Affairs, the Senior Vice President and Provost, and the Faculty Ombuds Officer throughout the procedures. The Faculty Affairs subcommittee and members of the full committee met with the Title IX Officer and the Deputy General Counsel from the OGC in October to discuss the various aspects of the procedures.

In the meeting with the Title IX Officer, the FAC learned that the OCRSM distinguishes in its practices between a report and a complaint; every case begins with a report, which can be disclosed by email or phone, but formal complaints are generated only by the Complainant stating that they would like for an

Investigation to happen. The OCRSM receives reports from third parties or from potential Complainants, and it conducts an interview with the Complainant to discuss the incident and determine whether the Complainant would like to or should initiate a formal complaint. The formal process is not automatic; instead, it develops from a conversation about the severity of the conduct and the potential Complainant's wishes for resolution. The FAC incorporated language to the procedures to be clearer on this point.

The FAC also discussed with the Title IX Officer the communication during the Initial Assessment after a formal complaint is made but before an Investigation begins. The FAC raised concerns that, given there is no contact with a Respondent by the OCRSM at this stage, a faculty Respondent could hear secondhand that allegations have been made. The FAC learned that the Initial Assessment typically does not include conversation with others beyond the Complainant, although it can. In considering this point, the FAC agreed it would be critical to either keep the Initial Assessment between the OCRSM and the Complainant, or to let the Respondent know at some point that there was a complaint and the nature of the complaint. At this time the OCRSM recommended we add language clarifying that the initial assessment was only between OCRSM and the complainant.

As it reviewed the new interim procedures, the FAC noted the absence of a process for the parties to appeal the Finding by the Special Investigator, which had previously existed in the January interim procedures. The FAC felt strongly that the right to appeal the Finding was an important aspect of due process that should be given through the Procedures. The OCRSM currently uses Standing Review Committees (SRCs) in the Student Procedures to review sexual misconduct cases; SRCs are composed of trained volunteers with an appropriate understanding of the Sexual Misconduct Policy & Procedures and the context necessary to review the Investigation Outcome. After consultation with the Title IX Officer and the OGC, the FAC voted to institute an automatic independent review of the Finding in the Faculty Procedures. This provides an adequate level of oversight of the Finding by the Special Investigator while staying sensitive to the overall timeline of the resolution process.

The FAC also considered whether faculty Complainants or Respondents should or can have support present during the Investigation process. The FAC agreed that many faculty members will wish to have a mentor or colleague assist them through the process, and some may wish to consult legal counsel. In cases involving student Respondents, the Student Procedures indicate that both parties will have the opportunity to involve a Support Person and an Advisor, if they so choose. The Support Person and Advisor have defined roles in the process to assist and provide guidance to the party, but the Student Procedures are clear that these individuals are not able to speak to the OCRSM on the party's behalf. According to current OCRSM procedures, students always have the right to have a Support Person and an Advisor, even in cases against faculty or staff Respondents; as this was not reflected in the Faculty Procedures, the FAC determined that revisions would be needed to align with current practices.

The FAC discussed potential support for faculty Complainants and Respondents with the OCRSM and OGC, and learned that there are ways in which the procedures for students need to provide added support, in order to appropriately reflect the relationship the University has with students and mirror processes in place for students in the *Code of Student Conduct*. The OCRSM and OGC also noted that the Faculty Procedures create an administrative process, not a legal process, and so support of legal counsel is not necessary. However, the FAC noted that since faculty can be terminated and their reputation can be harmed through this process, the desire of faculty to have support is understandable.

After further discussion, the FAC agreed that faculty should have the ability to have support personnel present during the process. The FAC felt strongly that faculty should have the right to an Advisor as well, if they so choose, and agreed that the language in the Procedures could be tailored to ensure that the role of any Advisors involved would be appropriate. After discussion, the FAC voted to enter language into

the procedures to allow faculty Respondents to have the assistance of a Support Person or an Advisor, neither of whom would be allowed to speak for the Respondent.

The FAC discussed at length ways to appeal the disciplinary action given as a result of the process. The interim procedures suggested that any faculty who wished to grieve or appeal the disciplinary action given as a result of the Faculty Procedures should use existing grievance procedures related to appealing termination, suspension, or other actions. The OCRSM and OGC recommended that University of Maryland and University System of Maryland policies related to termination and suspension of faculty should be used to appeal any such decisions related to sexual misconduct. In addition, the University of Maryland Policies and Procedures Governing Faculty Grievances (II-4.00[A]) allows faculty to file grievances related to a wide range of problems or actions; disciplinary action could be presented as a grievance under this policy.

The FAC questioned whether these existing policies provide an appropriate appeals process for the disciplinary action in cases of sexual misconduct. The FAC noted that existing processes either rely on review by administrators who may have been involved in determining the disciplinary action for sexual misconduct cases, or include review by a panel of Faculty Senators, who may not have the appropriate understanding to review grievances from these procedures. After consideration, the FAC was undecided on whether existing policies present appropriate mechanisms for grieving the disciplinary action. However, the FAC was not able to design a new grievance process for cases of sexual misconduct that would be more appropriate, and determined that use of existing procedures would suffice.

In the proposed revisions, the procedures state that faculty may grieve the disciplinary action in accordance with their status at the University. The FAC considered whether the lack of information in the procedures on how to initiate a grievance was a disservice to faculty; the FAC noted that since the procedures are very clear on every other step of the process, they should be equally clear on how faculty begin a grievance process related to the disciplinary action. However, since the procedures to be used depend in part on the discipline given, it would be difficult to create succinct instructions that apply to every case. In addition, the policies that exist to handle grievances are subject to change, so providing additional information could cause these procedures for sexual misconduct to be out of date. Also, the Complaint Procedures cannot grant faculty grievance rights - these rights are controlled by other UMD policies, USM policies, and state law. Faculty will retain these rights regardless of whether they are detailed within the Faculty Sexual Misconduct Complaint Procedures. Instead of providing additional text for the procedures, the FAC considered an administrative recommendation directed toward the OCRSM, the Office of Faculty Affairs, and other offices to provide information on grievance rights when appropriate and to generally do more to advertise how faculty may access grievance rights on campus. After consideration, the FAC voted to accept the proposed revisions to the procedures, and voted to approve this administrative recommendation.

After review, the Faculty Affairs Committee approved the revised Faculty Sexual Misconduct Complaint Procedures and an administrative recommendation related to grievance rights via an email vote ending Monday, November 16, 2015. The Faculty Affairs Committee 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 OGC, and the OCRSM, the Senate Office received revised interim procedures for review (Appendix 2).

The revised interim procedures incorporate a few key issues discussed by the FAC during its fall 2015 review. For instance, the procedures expressly state that all Complainants and Respondents will have the

opportunity to have one Support Person and one Advisor with them during the process, at their own expense and initiation. The procedures also clarify many technical issues raised by the FAC as proposed amendments in its fall 2015 draft.

As it began its review in March 2016, the FAC found that many of its previous concerns were still relevant to the revised interim procedures. The FAC raised many of the same issues for discussion, such as notice to the Respondent during the Initial Assessment, the lack of a clear means to review the Finding, and the role of the Provost and the Office of Faculty Affairs in determining the appropriate disciplinary action. In the latter instance, the FAC had previously recommended that the Office of Faculty Affairs should be responsible for determining the disciplinary action in all cases with a faculty Respondent, so that discipline given through the process would be consistent. The new interim procedures returned to a model from previous versions in which the appropriate dean, department chair, and/or other administrator would determine the disciplinary action. In discussing this issue, the FAC agreed that the need for a centralized and consistent approach to discipline stands, and agreed to propose that the OFA have this role in these procedures as well.

The committee also considered the current language related to the Interim Protective Measures and the conditions under which they are imposed. The OGC advised that there is consultation with the OGC and the OAG if and when there is a challenge or questions about the appropriateness of the Interim Protective Measures in light of the allegations.

In discussing the Initial Assessment, the FAC identified similar concerns with the language in the new interim procedures to those raised in its review of the previous interim procedures. The new interim procedures do not provide notice to the Respondent of the allegations during or after the Initial Assessment, even though the Title IX Officer is given the authority to discuss the allegations with other administrators prior to an investigation. The FAC was very concerned that discussions with other administrators could harm the Respondent, either through gossip among colleagues or by perception, since the administrator would have knowledge of a complaint without the benefit of investigation. Also, the Title IX office would retain records of initial assessments which could be used to assess pattern evidence in any subsequent complaints. Thus, it was important that the respondent know that there was a complaint and its nature. In order to not have this process interfere with the initial assessment as it occurs, the FAC committee agreed to recommend this notice occur at the end of the initial assessment. In consultation with the OGC, the committee developed new language to address this concern. The new language clarifies that any communication with other administrators during the Initial Assessment would only occur if necessary to comply with Title IX requirements, and to stress that confidentiality will be maintained throughout those conversations. The new language also says if an administrator is informed during the Initial Assessment and the complaint is dismissed, the administrator and the Respondent should be notified that a complaint had been made and had been dismissed. The respondent will be notified in all cases at the end of the initial assessment that a complaint was filed and its nature.

As it reviewed the new interim procedures, the FAC raised concerns about the Appeals process. The new interim procedures allow for appeals on the grounds of substantial procedural error or new evidence. However, the procedures present no opportunity to ask that the finding be reviewed on the grounds that it was arbitrary or unfounded. As a result, the FAC felt the appeals process was too narrowly drawn, and did not allow appropriate due process for Respondents. After discussion, the FAC agreed to recommend instituting an automatic review of the Finding by an SRC, as it had recommended in a prior version of the procedures. The FAC developed new text to indicate that the review would occur automatically after the Investigator finalizes the report, and allows for an independent assessment to consider whether the finding is reasonable, given the evidence and information in the case. The committee agreed to recommend this process be included in the revised procedures in addition to the Appeals process.



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

## **RECOMMENDATIONS**

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

The Faculty Affairs Committee recommends that the Complainant be advised at the earliest point in the process when Alternative Resolution is appropriate in lieu of investigation and adjudication.

The Faculty Affairs Committee recommends that any *Notice of Disciplinary Action* sent to Respondents under these Procedures state that the Faculty Ombuds Officer at UMD is available to assist faculty in understanding grievance policies and rights based on specific faculty status. In addition, the committee recommends that the Office of Faculty Affairs, the Office of Civil Rights & Sexual Misconduct, and other appropriate units on campus ensure that their websites provide guidance for faculty on faculty grievance rights and policies, as they relate to the Faculty Sexual Misconduct Complaint Procedures.

## **APPENDICES**

Appendix 1 – Senate Executive Committee (SEC) Charge on the Review of the Interim Sexual Misconduct Faculty Procedures

Appendix 2 – Revised Faculty Sexual Misconduct Complaint Procedures (approved on an interim basis on March 21, 2016)

Appendix 3 - Revised Procedures for Faculty (approved on interim basis on October 1, 2015)

## APPENDIX C: FACULTY 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 Complainant
- B. Requests for Confidentiality
- C. Initial Assessment
- D. Interim Protective Measures

### **V. Resolution Processes**

- A. Time Frame for Resolution
- B. Alternative Resolution Process
- C. Investigation Process

### **VI. Appeals**

- A. Overview
- B. Grounds for Appeal
- C. Appellate Body
- D. Appeal Outcome

### **VII. Remedies & Disciplinary Action**

- A. Impact & Mitigation Statements
- B. Remedies
- C. Disciplinary Action

### **VIII. Grievance Rights**

### **IX. Final Outcome**

### **X. Records Retention**

### **XI. Post-Resolution Follow-Up**

## APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

### I. OVERVIEW

These procedures (“**Faculty Procedures**”) set forth in Appendix C 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 faculty. 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**.

For purposes of the Policy and these Faculty Procedures, faculty include all University employees with faculty rank as described in II-1.00(A) University of Maryland Policy on Appointment, Promotion, and Tenure of Faculty at <http://www.president.umd.edu/policies/2014-ii-100a.html>.

Employees other than those with faculty rank are governed by the Staff Sexual Misconduct Complaint Procedures (*see Appendix B*). ~~These Fa~~ **These Faculty p** Procedures replace all procedures previously in effect pertaining to the investigation and resolution of **sSexual mMisconduct** complaints against faculty at the University of Maryland.

### 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/or (2) an Advisor. Meetings include, but are not limited to, meetings with Office of Civil Rights & Sexual Misconduct (OCRSM), investigative interviews, and document reviews, and alternative resolutions.

#### A. Support Person

A party may choose to be accompanied 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

Throughout the process, the Title IX Officer or designee, Investigators, 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 **and/or**

## APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

Advisor accompany them to a meeting, the **individual party** must notify OCRSM 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 online at the OCRSM website, [www.umd.edu/ocrsm/](http://www.umd.edu/ocrsm/) or from OCRSM directly. 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 mMisconduct** against faculty may be made to the OCRSM. Reports may also be made to any Responsible University Employee (RUE). **An** RUE, as defined by **this 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. **Responsible University Employees RUEs** are required to share all reports of **sSexual mMisconduct** they receive, promptly with the Title IX Officer or designee.

Students **Complainants** may also report **sSexual mMisconduct** against faculty to the Office of Student Conduct (**OSC**), or **to** the Office of Rights & Responsibilities (R&R) in the Department of Resident Life.

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 Faculty Procedures. **As described in IV.C**, **U**pon receipt of any report, the Title IX Officer or designee 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 the Office of Faculty Affairs and other campus offices to facilitate Interim Protective Measures (**as described in IV.D**) 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 and pursue resolution under these Faculty 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 Faculty 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 mMisconduct** and proceed with a formal complaint under these Faculty 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 sSexual mMisconduct**. The OCRSM will coordinate with the appropriate University office to provide support and assistance to each Complainant in making important decisions related to reports of **sSexual mMisconduct**. 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 mMisconduct**. However, when appropriate, the University, through the OCRSM, retains the right to

## APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

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 Faculty Procedures and is informed of their rights and responsibilities. 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

Whenever 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 or designee 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, may 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 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 ~~h~~Interim ~~p~~Protective ~~m~~Measures;
- Assess for pattern evidence or other similar conduct by the Respondent when 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
- Assess the reported conduct for possible referral to the University of Maryland Police Department (UMPD) for a timely warning under the Clery Act.

## APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

**During the Initial Assessment, information will be shared with other units/administrators only as necessary to comply with Title IX requirements, and confidentiality will be maintained by the OCRSM and other administrators, to the extent possible. If communication is not necessary in order to comply with Title IX requirements, the dean, department chair, and/or other administrators will not be notified during the Initial Assessment.**

At the conclusion of the Initial Assessment, the OCRSM will determine the appropriate next step(s), including but not limited to: no further action, the imposition of Interim **Protective Measures**, Alternative Resolution, and/or proceeding with an investigation. **In cases where the Initial Assessment determines that the reported conduct does not constitute a potential violation under the Policy and no further action is warranted, the OCRSM will separately notify the parties of the resulting assessment and inform the Respondent of the nature of the complaint. After the parties have been notified, the OCRSM will also notify any administrators who had been contacted during the Initial Assessment of the results of the assessment.**

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

~~Where~~ **When** 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 Title IX Officer or designee in consultation with appropriate ~~Deans, department heads, and other~~ University administrators 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 Title IX Officer or designee 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 OCRSM 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 OCRSM 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. Time Frame for Resolution

Consistent with the goal of maximizing educational and working opportunities, remedying the effects of Prohibited Conduct and promoting campus safety while minimizing the possible disruptive nature of the process, the OCRSM 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 an additional estimated 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

## APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

importance of resolving complaints in a timely and expeditious manner. The Title IX Officer may extend the general time frames for the completion of all required actions. If such an extension occurs, the parties will be notified in writing by the OCRSM.

### B. Alternative Resolution Process

**The Title IX Officer or designee has the discretion to determine whether a complaint is appropriate for Alternative Resolution and may propose Alternative Resolution to the Complainant as an option. Neither party is required to accept responsibility for the alleged Prohibited Conduct in order to proceed with Alternative Resolution.** ~~In some cases, †~~The Complainant may **then** seek Alternative Resolution in lieu of **an** 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 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 or designee has the discretion to determine whether a complaint is appropriate for Alternative Resolution and~~ **The Title IX Officer** 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;~~
- **Academic and/or housing modifications for Student Complainants;**
- Targeted or broad-based educational programming or training for relevant individuals or groups;
- Workplace modifications and/or other administrative changes;
- 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; and
- ~~Compliance with orders of no~~ **Agreements to cease** contact ~~that~~ **and** limit access to specific University buildings or areas or forms of contact with particular persons.

The imposition of remedies or interventions obtained through Alternative Resolution may be achieved by an agreement acceptable to the parties and **the** University. **The OCRSM will work with the Faculty Ombuds Officer 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 or designee determines that further action is necessary, or if a Respondent fails to comply with the terms of the Alternative Resolution agreement, the matter may be referred for investigation and resolution under these Faculty 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**. **The Office of Faculty Affairs will also receive 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.**



## APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

### 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 or the Respondent fails to comply with the terms of an Alternative Resolution agreement, an investigation will occur.

#### 1. Notice of Investigation

In the event of an investigation, the Investigator will send a written *Notice of Investigation and Notice of Rights and Responsibilities* to both parties.

The *Notice of Investigation* will contain 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 disciplinary actions associated with the Prohibited Conduct. Both parties will also be informed that they will have an opportunity to be heard regarding the complaint during the investigation process, including the opportunity to be heard during ~~an~~ **separate** interviews with an Investigator regarding the alleged ~~s~~**Sexual** ~~misconduct~~**Misconduct**.

#### 2. Notice of Rights and Responsibilities

Both parties will be provided with a copy of the Policy and Faculty Procedures and informed 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. 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, based on the information gathered, 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 **occurred and that it** constituted Prohibited Conduct in violation of the Policy.

#### 4. Role of the Investigator

The Title IX Officer or designee will designate one or more 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 **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~~**C**omplainants and the University community while promoting accountability.

#### 5. 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 believe they have relevant information. The Investigator will speak separately with both parties and



## APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

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 **written** comments, information, and/or **ask** questions **to the Investigator**. 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.

## **6. Recommended ~~Outcome~~/Investigation Finding**

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 ~~the~~ material facts, and a **recommended** finding of whether or not a Policy violation occurred by a preponderance of the evidence. ~~The notice will also include a range of potential disciplinary action associated with such findings. The Title IX Officer or designee will review the final investigation report.~~

## **7. Independent Review of the Finding**

## APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

The final investigation report and the corresponding finding will be automatically reviewed by a Standing Review Committee (SRC). The SRC is composed of three (3) members from the University community who have had no previous involvement with the case, and have been trained to review such cases. The SRC will include at least one (1) member from the constituency (faculty, staff, or student) of each party. SRC members are obligated to disclose to the OCRSM any known conflicts prior to participating in any specific SRC review. 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.

The SRC will review the investigation report and consider whether the finding is supported by the information obtained in the course of the investigation. The SRC will confine its consideration to a review of the written record. The SRC may speak with the Investigator when clarification on information in the final investigation is needed. The results of any additional requested investigation will be reported to the SRC. Once the investigation is complete, the SRC will issue its decision on the recommended finding. The SRC will make one of three possible decisions. The SRC can approve the recommended findings of the investigation, issue specific instructions to the Investigator for further investigation, or reject the recommended findings. The SRC must issue a written decision to the Title IX Officer within five (5) business days of receipt of the final investigation report and/or receipt of any additional information resulting from additional requests to the Investigator by the SRC.

After the SRC issues its written finding, the OCRSM will issue ~~A~~ a *Notice of Investigation Finding*, which will include a range of potential disciplinary actions associated with the finding. The *Notice of Investigation Finding* will be sent to the Complainant and Respondent and the Office of Faculty Affairs, along with the finding and a copy of the final investigation report, including any additional information resulting from additional investigation.

Both parties will be contacted by, and required to meet separately with, ~~their respective Dean or Department Chair~~ the Office of Faculty Affairs, or if one of the parties is a student, with the Director of Student Conduct ~~if a student, separately~~, to discuss the investigation finding/outcome and next steps.

Either or both parties may appeal the investigation finding in accordance with Section VI below.

### VI. APPEALS

Either or both parties may appeal the investigation finding. An appeal must be submitted in writing within five (5) ~~calendar~~ ~~business~~ days of the date of receipt of the *Notice of Investigation Finding*. Appeals submitted after five (5) ~~calendar~~ ~~business~~ days shall be denied. If an appeal is received by the OCRSM, the other party will be notified and given five (5) ~~calendar~~ ~~business~~ days from the date of receipt of the notice to respond. Responses shall be submitted directly to the OCRSM. Appeals and responses filed by each party will be shared with the other party and considered together in one appeal review process. If neither party submits an appeal, the investigation finding is final after five (5) ~~calendar~~ ~~business~~ days.

#### A. Overview

The scope of the appeal is limited to the grounds set forth below. Dissatisfaction with the investigation outcome is not a valid basis for appeal. Appeals are not intended to allow for a second review of the same facts of the case or to ~~re-determine-reconsider~~ whether there was a Policy violation based on the same

## APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

facts of the case. In most cases, appeals are confined to a review of the written record and the grounds for appeal submitted by the parties.

### B. 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.

When the basis of the Appeal is new evidence, the ~~Title IX Officer or designee~~, **Appellate Body** 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 **and unavailable at the time of the investigation**, the Appeal will be denied. If the information is determined to be new and unavailable at the time of the investigation, ~~it will be sent to~~ the Appellate Body **will make a for review and** determination as to whether the new information could change the outcome of the investigation. If the Appellate Body determines that the new evidence could change the outcome, the case will be sent back to the OCRSM Investigator for further investigation. **After new evidence is considered, the OCRSM will then provide the Appellate Body with a modified report and findings as appropriate. The modified report will be considered by the Appellate Body. The Appellate Body will then decide to affirm the recommendations of the modified report, reject them or ask for additional investigation. The OCRSM Investigator will report the outcome of any further investigation to the Appellate Body.**

### C. Appellate Body

The Standing Review Committee (SRC) **Appellate Body** is the designated Appellate Body for all cases involving allegations of ~~s~~Sexual ~~m~~Misconduct by faculty. The SRC **Appellate Body** is composed of three (3) members **(faculty, staff, and/or students), depending on the case. SRC members shall be members** from the University community who have had no previous involvement with the case, and have been trained to review such cases. **The SRC Appellate Body will include at least one (1) member from the constituency (faculty, staff, or student) of each party. Deference shall be given to the determinations of the Investigator.**

### D. Appeal Outcome

The SRC **Appellate Body** may:

- Affirm the Investigation Finding;
- Reject the Investigation Finding;
- Remand the case back to the Investigator for further investigation.

The SRC **Appellate Body** Chair will render a written decision on the appeal to the Title IX Officer or designee, with a copy to the Senior Vice President and Provost or designee within five (5) business days

## APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

from the date of the submission of all appeal documents. No further appeal is available from the SRC Decision. **The SRC Appellate Body Decision is final and may not be further appealed. No further appeal is available from of the SRC Appellate Body Decision.**

### VII. REMEDIES & DISCIPLINARY ACTION

#### A. Impact and Mitigation Statements

Whenever there ~~is~~ **has been** a finding of responsibility, before the University issues any remedies or imposes disciplinary action, if any, both parties have the opportunity to submit statements for consideration by the ~~relevant Dean, department chair, unit head or designee in consultation with the Title IX Officer or designee~~ **Office of Faculty Affairs**, within ~~three~~ **five (35) business calendar** days from the date of receipt of the ~~decision~~ **Notice of Investigation Finding**. **In the event of an Appeal, Impact and Mitigation Statements may be submitted within five (5) calendar days from the date of receipt of the SRC Appellate Body Decision.**

The Complainant may submit a written statement describing the impact of the Prohibited Conduct on the Complainant, and/or request to meet with the ~~relevant Dean, department chair, unit head or designee and Title IX Officer or designee~~ **Office of Faculty Affairs** 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 appropriate remedies and/or recommended discipline, if any, and/or request to meet with the ~~relevant Dean, Department Chair or unit head, and the Title IX Officer or designee~~ **Office of Faculty Affairs** to provide their statement verbally.

The parties' respective statements will not be shared with the other party.

#### B. Remedies

The Title IX Officer or designee, in consultation with the ~~relevant Dean, department chair, unit head or designee~~ **Office of Faculty Affairs**, will identify reasonable short-term and/or long-term remedies to address the effects of the conduct on the Complainant and prevent its reoccurrence. 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 or designee may also identify remedies, such as training for specific audiences, to address the effects of the conduct on the larger University community. **Remedies are separate from disciplinary action and may occur independently or concurrently with any disciplinary action that is imposed.**

Remedies for student Complainants under these **Faculty Procedures** may include, but are not limited to:

- **Support 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;- **and**
- **Housing accommodations.**

**Other R**emedies for ~~faculty~~ Complainants ~~and Responsibilities~~ may include, but are not limited to:

- Workplace modifications and other administrative changes, no contact orders, denial of access,

## APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

schedule changes, counseling and/or referral to outside agencies.

### C. Disciplinary Action

When there is a finding of responsibility, and all appeals under these Faculty Procedures, if any, have been exhausted, ~~respective Dean, department chair, unit head or designee~~ the **Office of Faculty Affairs**, **in consultation** ~~will consult~~ with the Title IX Officer or designee, **will** ~~in~~ determine ~~ing~~ the appropriate disciplinary action, if any.

To determine what type of disciplinary action is most appropriate, the **Office of Faculty Affairs** ~~Dean, department chair, unit head or designee~~ in consultation with other appropriate administrator(s) shall consider the following:

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

Discipline shall be imposed in accordance with all procedural due process rights afforded faculty based on their status in accordance with University policy and Maryland State law. All faculty disciplinary action shall be approved by the Senior Vice President and Provost or designee.

#### 1. Notice of Disciplinary Action

When disciplinary action is to be imposed, upon approval by the Senior Vice President and Provost or designee, the **Office of Faculty Affairs** ~~relevant Dean or Department Chair or designee~~ will issue a *Notice of Disciplinary Action* to the Respondent.

Disciplinary action will depend on the specific circumstances in each case and may include discipline ranging from a written reprimand up to and including termination of employment. Other administrative and/or non-disciplinary remedies may also be imposed, including but not limited to, no contact directives, and/or a change in work duties, work locations, or work schedules.

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

## VIII. GRIEVANCE RIGHTS

Faculty may grieve disciplinary action in accordance with the rights afforded to them based on their specific faculty status. ~~During the grievance process, the Notice of Investigation Finding may also be reviewed, as it relates to the resulting disciplinary action.~~

## IX. FINAL OUTCOME

When all the procedures and/or grievance processes afforded to both parties under these Faculty Procedures, and the rights afforded to them based on their specific employment status have been exhausted, the Senior Vice President and Provost or designee will promptly notify the Title IX Officer or

## APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

designee of any modification of the final outcome. The Title IX Officer or designee will notify the parties of any modification to the final outcome, except as prohibited by Maryland and federal law.

### X. RECORDS RETENTION

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

The Office of the Senior Vice President and Provost, the department/unit head and/or Office of the Dean will maintain records of all disciplinary action, **and** remedies, ~~workplace modifications and other administrative changes and remedies~~ related to a complaint and any Alternative Resolution agreements.


### XI. POST-RESOLUTION FOLLOW-UP

After any disciplinary action, ~~workplace modifications, administrative changes~~ and/or ~~other~~ remedies are issued, if the Complainant agrees, the Title IX Officer or designee 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 designee may periodically contact the Respondent to assure compliance with the intent and purpose of any disciplinary action, ~~workplace modification, administrative change~~ and/or remedies that have been imposed. Any violation by a Respondent of the intent and purpose of any disciplinary action, ~~workplace modification, administrative change~~ and/or remedies imposed under the Policy, or a failure by a University employee to provide a specified remedy should be reported to the OCRSM.

The Complainant and Respondent are encouraged to provide the Title IX Officer or designee with feedback about their experience with the process and recommendations regarding ways to improve the effectiveness of the University's implementation of the Sexual Misconduct Policy and Faculty Procedures.



## University Senate CHARGE

<b>Date:</b>	February 9, 2015
<b>To:</b>	Devin Ellis Chair, Faculty Affairs Committee
<b>From:</b>	Donald Webster  Chair, University Senate
<b>Subject:</b>	Review of the Interim Sexual Misconduct Faculty Procedures
<b>Senate Document #:</b>	14-15-27
<b>Deadline:</b>	November 6, 2015

The Senate Executive Committee (SEC) requests that the Faculty Affairs Committee review the attached interim Faculty 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 faculty 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 faculty 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 Faculty Sexual Misconduct Investigation & Adjudication Procedures (Appendix C of the University of Maryland Sexual Misconduct Policy & Procedures (VI-1.60[A])).
2. Consult with the University's Title IX Coordinator and the Associate Provost for Faculty Affairs regarding the development of the interim faculty procedures.
3. Review similar faculty 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 faculty sexual misconduct cases.
5. Review the interim University of Maryland Sexual Misconduct Policy & Procedures ([VI-1.60\[A\]](#)) and consider whether the proposed faculty procedures align with the University's interim policy, USM policy, and VAWA guidelines.
6. Consult with the Senate Staff Affairs Committee regarding any potential revisions to the staff procedures.
7. Consult with the University's Office of General Counsel on any recommended revisions.
8. If appropriate, recommend whether the interim faculty 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



**UNIVERSITY OF MARYLAND**  
**FACULTY SEXUAL MISCONDUCT INVESTIGATION & ADJUDICATION PROCEDURES**

**APPENDIX C**

**INTRODUCTION**

**I. FILING A COMPLAINT**

- A. Initial Assessment
- B. Interim Measures

**II. COMPLAINT RESPONSE**

- A. Sexual Misconduct Investigation
- B. Notice of Review Option
- C. OSM Investigation Outcome
- D. Independent Review by Standing Review Committee
- E. Notice of Standing Review Committee Finding

**III. APPEAL**

- A. Grounds for Appeal
- B. Considerations
- C. Standing Review Committee Appellate Body
- D. Final Outcome Notice

**IV. DISCIPLINE AND ADMINISTRATIVE OR OTHER REMEDIES**

**V. GRIEVANCE RIGHTS**

**VI. OUTCOME**

- A. Records Retention
- B. Additional Notification Following Any Grievance Initiated by the Respondent

**INTRODUCTION**

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

**UNIVERSITY OF MARYLAND**  
**FACULTY SEXUAL MISCONDUCT INVESTIGATION & ADJUDICATION PROCEDURES**

**I. FILING A COMPLAINT**

A complaint of sexual misconduct against faculty 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 assistant<sup>1</sup> 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 relevant supervisor, Department Chair/Unit Head and/or Dean and Provost or designee or other administrators, as appropriate on a need-to-know basis.

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<sup>1</sup> 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).

**UNIVERSITY OF MARYLAND**  
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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 Department Chair and/or Dean 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.

During the Investigation, the Complainant and Respondent will have an equal opportunity to

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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 together constitute the OSM Investigation Outcome. The OSM Investigation Outcome will then be sent to the Standing Review Committee for an independent evaluation.

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**D. Independent Review by the Standing Review Committee**

The Standing Review Committee (SRC) is an independent body of five (5) persons made up of a combination of faculty, staff and students with a minimum of three (3) faculty members. 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 OSM Finding 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 will be sent to the appropriate supervisor, department chair or unit head, Dean, and Provost or designee and other administrators, as necessary on a need-to-know basis.

**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 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

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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, department chair or unit head, Dean and Provost or designee as deemed necessary, in consultation with the Title IX Office and other administrators, 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 and/or administrative and/or other remedies may include, but is not limited to, the following:

- Reassignment of duties;
- Mandatory individualized sexual misconduct training;
- Oral Reminders;
- Written Reminders/Letters of Reprimand;
- Suspension with or without Pay; and
- Termination

**V. GRIEVANCE RIGHTS**

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

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

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

Any faculty member holding an appointment at ranks set forth in Paragraphs I.A. through I.E. of the University Policy II-1.00(A) University of Maryland Policy on Appointment, Promotion and Tenure of Faculty may be suspended in accordance with II-9.00(A) University of Maryland Policy on Suspension of Faculty at <http://www.president.umd.edu/policies/2014-ii-900a.html>. Any faculty member who receives a disciplinary action other than suspension or termination based on a violation of this Policy may grieve the discipline and/or other action in accordance with the procedures set forth in II-4.00(A) University of Maryland Policies and Procedures Governing Faculty Grievances (“Faculty Grievance policy”) at <http://www.president.umd.edu/policies/2014-ii-400a.html>.

## **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 Chair and/or Dean and the Office of the Provost 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**



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## I. OVERVIEW

These procedures set forth in Appendix C 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 faculty. 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.

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For purposes of the Policy and the Faculty Procedures, faculty include all University employees with faculty rank as described in II-1.00(A) University of Maryland Policy on Appointment, Promotion and Tenure of Faculty at <http://www.president.umd.edu/policies/2014-ii-100a.html>.

Employees other than those with faculty rank are governed by the Staff Sexual Misconduct Complaint Procedures (*see Appendix B*). These Fa procedures replace all procedures previously in effect pertaining to the investigation and resolution of sexual misconduct complaints against faculty at the University of Maryland.

### **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, meetings with Office of Civil Rights & Sexual Misconduct (OCRSM), investigative interviews, and document reviews, and alternative resolutions.

#### **A. Support Person**

A party may choose to be accompanied 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**

Throughout the process, the Title IX Officer or designee, Investigators and other University representatives 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 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

## **APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES**

obtained online at the OCRSM website, [www.umd.edu/ocrsm/](http://www.umd.edu/ocrsm/) or from OCRSM directly. 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 faculty may be made to the OCRSM. Complaints may also be made to any Responsible University Employee (RUE). A RUE, as defined by this Policy, includes all University administrators, supervisors in non-confidential roles, faculty members, campus police, coaches, athletic trainers, resident assistants, and non-confidential first responders. Responsible University Employees are required to share all reports of sexual misconduct they receive, promptly with the Title IX Officer or designee.

Student Complainants may also report sexual misconduct against faculty to the Office of Student Conduct, or the Office of Rights & Responsibilities (R&R) in the Department of Resident Life.

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 Faculty Procedures. Upon receipt of any report, the Title IX Officer or designee 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 the Office of Faculty Affairs 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 and pursue resolution under these Faculty 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 Faculty 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 Faculty 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 will coordinate with the appropriate University office 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 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**

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### **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 Faculty Procedures and is informed of their rights and responsibilities. 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**

Whenever 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 or designee 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, may 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 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 when 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
- 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(s), including but not limited to: no further action, the imposition of Interim Measures, Alternative Resolution, and/or proceeding with an investigation.

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When the Initial Assessment determines the reported conduct does not rise to the level of a potential violation under this Policy, but may violate another 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 Title IX Officer or designee in consultation with appropriate Deans, department heads, and other University administrators may authorize interim protective measures to ensure the safety and well-being of the Complainant and others in the campus community, as appropriate. The Title IX Officer or designee 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 OCRSM 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 OCRSM to address any concerns. Information about interim protective measures can be found on pages 11-12 of the Policy.

## **V. RESOLUTION PROCESSES**

### **A. Time Frame for Resolution**

Consistent with the goal of maximizing educational and working opportunities, remedying the effects of Prohibited Conduct and promoting campus safety while minimizing the possible disruptive nature of the process, the OCRSM 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 an additional estimated 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 all required actions. If such an extension occurs, the parties will be notified in writing by the OCRSM.

### **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 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.

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The Title IX Officer or designee 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;
- Workplace modifications and/or other administrative changes;
- 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; and
- Compliance with orders of no contact that limit access to specific University buildings or areas or forms of contact with particular persons.

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 or designee determines that further action is necessary, or if a Respondent fails to comply with the terms of the Alternative Resolution agreement, the matter may be referred for investigation and resolution under these Faculty 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.

### 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 or the Respondent fails to comply with the terms of an Alternative Resolution agreement, an investigation will occur.

#### 1. Notice of Investigation

In the event of an investigation, the Investigator will send a written *Notice of Investigation and Notice of Rights and Responsibilities* to both parties.

The *Notice of Investigation* will contain 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 disciplinary actions associated with the Prohibited Conduct. Both parties will also be informed 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

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the alleged sexual misconduct.

### **2. Notice of Rights and Responsibilities**

Both parties will be provided with a copy of the Policy and Faculty Procedures and informed 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. 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, based on the information gathered, a recommended finding will be made 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.

### **4. Role of the Investigator**

The Title IX Officer or designee will designate one or more 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.

### **5. 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 believe 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

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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.

## **6. Investigation Outcome/Finding**

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 of the material facts, and a finding of whether or not a Policy violation occurred by a preponderance of the evidence. The notice will also include a range of potential disciplinary action associated with such findings. The Title IX Officer or designee will review the final investigation report.

A *Notice of Investigation Finding* will be issued by the OCRSM and sent to the Complainant and Respondent and their respective Dean, Department Chair and/or Unit Head(s), along with a copy of the final investigation report.

Both parties will be contacted by, and required to meet with, their respective Dean or Department Chair, or Director of Student Conduct if a student, separately, to discuss the investigation finding/outcome and next steps.

Either or both parties may appeal the investigation finding in accordance with Section VII below.

## **VI. APPEALS**

Either or both parties may appeal the investigation finding. An appeal must be submitted in writing within five (5) business days of the date of receipt of the *Notice of Investigation Finding*.



## **APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES**

Appeals submitted after five (5) business days shall be denied. If an appeal is received by the OCRSM, 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 OCRSM. Appeals and responses filed by each party will be shared with the other party and considered together in one appeal review process. If neither party submits an appeal, the investigation finding is final after five (5) business days.

### **A. Overview**

The scope of the appeal is limited to the grounds set forth below. Dissatisfaction with the investigation outcome is not a valid basis for appeal. Appeals are not intended to allow for a second review of the same facts of the case or to redetermine whether there was a Policy violation based on the same facts of the case. In most cases, appeals are confined to a review of the written record and the grounds for appeal submitted by the parties.

### **B. 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.

When the basis of the Appeal is new evidence, the Title IX Officer or designee, 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 sent to the Appellate Body for review and determination as to whether the new information could change the outcome of the investigation. If the Appellate Body determines that the new evidence could change the outcome, the case will be sent back to the OCRSM Investigator for further investigation. The OSCR Investigator will report the outcome of any further investigation to the Appellate Body.

### **C. Appellate Body**

The Standing Review Committee (SRC) is the designated Appellate Body for all cases involving allegations of sexual misconduct by faculty. The SRC is composed of three (3) members from the University community 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 Investigator.

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### D. Appeal Outcome

The SRC may:

- Affirm the Investigation Finding;
- Reject the Investigation Finding;
- Remand the case back to the Investigator for further investigation.

The SRC Chair will render a written decision on the appeal to the Title IX Officer or designee, with a copy to the Senior Vice President and Provost or designee within five (5) business days from the date of the submission of all appeal documents. No further appeal is available from the SRC Decision.

## VII. REMEDIES & DISCIPLINARY ACTION

### A. Impact and Mitigation Statements

Whenever there is a finding of responsibility, before the University issues any remedies or imposes disciplinary action, if any, both parties have the opportunity to submit statements for consideration by the relevant Dean, department chair, unit head or designee in consultation with the Title IX Officer or designee, within three (3) business days from the date of receipt of the decision.

The Complainant may submit a written statement describing the impact of the Prohibited Conduct on the Complainant, and/or request to meet with the relevant Dean, department chair, unit head or designee and Title IX Officer or designee 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 appropriate remedies and/or recommended discipline, if any, and/or request to meet with the relevant Dean, Department Chair or unit head, and the Title IX Officer or designee to provide their statement verbally.

The parties' respective statements will not be shared with the other party.

### B. Remedies

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

Remedies for student Complainants under these may include, but are not limited to:

- **Support 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.

## APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

Remedies for faculty Complainants may include, but are not limited to:

- Workplace modifications and other administrative changes, no contact orders, denial of access, housing accommodations, schedule changes, counseling and/or referral to outside agencies.

### C. Disciplinary Action

When there is a finding of responsibility, and all appeals under these Faculty Procedures, if any, have been exhausted, the respective Dean, department chair, unit head or designee will consult with the Title IX Officer or designee in determining the appropriate disciplinary action, if any.

To determine what type of disciplinary action is most appropriate, the Dean, department chair, unit head or designee in consultation with other appropriate administrator(s) shall consider the following:

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

Discipline shall be imposed in accordance with all procedural due process rights afforded faculty based on their status in accordance with University policy and Maryland State law. All faculty disciplinary action shall be approved by the Senior Vice President and Provost or designee.

#### 1. Notice of Disciplinary Action

When disciplinary action is to be imposed, upon approval by the Senior Vice President and Provost or designee, the relevant Dean or Department Chair or designee will issue a *Notice of Disciplinary Action* to the Respondent.

Disciplinary action will depend on the specific circumstances in each case and may include discipline ranging from a written reprimand up to and including termination of employment. Other administrative and/or non-disciplinary remedies may also be imposed, including but not limited to, no contact directives, and/or a change in work duties, work locations, or work schedules.

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

## VIII. GRIEVANCE RIGHTS

Faculty may grieve disciplinary action in accordance with the rights afforded to them based on their specific faculty status. During the grievance process, the *Notice of Investigation Finding* may also be reviewed, as it relates to the resulting disciplinary action.

## IX. FINAL OUTCOME

## **APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES**

When all the procedures and/or grievance processes afforded to both parties under these Faculty Procedures, and the rights afforded to them based on their specific employment status have been exhausted, the Senior Vice President and Provost or designee will promptly notify the Title IX Officer or designee of any modification of the final outcome. The Title IX Officer or designee will notify the parties of any modification to the final outcome, except as prohibited by Maryland and federal law.

### **X. RECORDS RETENTION**

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

The Office of the Senior Vice President and Provost, the department/unit head and/or Office of the Dean will maintain records of all disciplinary action, remedies, workplace modifications and other administrative changes and remedies related to a complaint and any Alternative Resolution agreements.

### **XI. POST-RESOLUTION FOLLOW-UP**

After any disciplinary action, workplace modifications, administrative changes and/or other remedies are issued, if the Complainant agrees, the Title IX Officer or designee 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 designee may periodically contact the Respondent to assure compliance with the intent and purpose of any disciplinary action, workplace modification, administrative change and/or remedies that have been imposed. Any violation by a Respondent of the intent and purpose of any disciplinary action, workplace modification, administrative change and/or remedies imposed under the Policy, or a failure by a University employee to provide a specified remedy should be reported to the OCRSM.

The Complainant and Respondent are encouraged to provide the Title IX Officer or designee with feedback about their experience with the process and recommendations regarding ways to improve the effectiveness of the University's implementation of the Sexual Misconduct Policy and Faculty Procedures.

## APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

### I. INTRODUCTION

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

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

### II. FILING A COMPLAINT

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

#### A. Initial Assessment

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

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

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

## **APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES**

### **B. Interim Protective Measures**

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

### **III. SEXUAL MISCONDUCT INVESTIGATION**

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

#### **A. Notice of Investigation**

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

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

#### **B. Investigation**

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

#### **C. Notice of Opportunity to Review Investigation Report**

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

## APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

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

### **D. Investigation Outcome - Finding**

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

### **E. Notice of Finding of Policy Violation**

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

## **IV. DISCIPLINARY ACTION**

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

### **Notice of Disciplinary Action**

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

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

## APPENDIX C: FACULTY SEXUAL MISCONDUCT COMPLAINT PROCEDURES

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

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

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

### V. GRIEVANCE RIGHTS

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

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

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

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

#### B. Suspension of a Faculty Member

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

#### C. Other Disciplinary Action against a Faculty Member

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



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

### D. Adjunct Faculty

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

## VI. FINAL OUTCOME

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

### Records Retention

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

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