



Proposal to Establish a Consensual Relationships Policy (Senate Document #18-19-37)

TO Darryll J. Pines | President

FROM Laura Dugan | Chair, University Senate

I am pleased to forward the accompanying legislation for your consideration and approval. William Reed, Chair of the Faculty Affairs Committee presented the Proposal to Establish a Consensual Relationships Policy (Senate Document #18-19-37), which the University Senate approved at its meeting on May 4, 2021. Please inform the Senate of your decision and any administrative action related to your conclusion.

Approved:

**Darryll J. Pines
President**

Date:

05-10-2021

Copies of this approval and the accompanying legislation will be forwarded to:

- Ann G. Wylie**, Interim Senior Vice President and Provost
- Reka Montfort**, Executive Secretary and Director, University Senate
- Michael Poterala**, Vice President and General Counsel
- Georgina Dodge**, Vice President for Diversity and Inclusion
- Dylan Baker**, Interim Assistant Vice President, Office of Finance and Personnel
- John Bertot**, Associate Provost for Faculty Affairs
- Elizabeth Beise**, Associate Provost for Academic Planning & Programs
- Rhonda Smith**, Acting Director, Division of Academic Affairs
- Steve Fetter**, Associate Provost and Dean, Graduate School
- Rythee Lambert**, Interim Assistant Vice President, University Human Resources
- Grace Karmioli**, Title IX Officer and Director, Office of Civil Rights & Sexual Misconduct
- William Reed**, Chair, Faculty Affairs Committee



Proposal to Establish a Consensual Relationships Policy

PRESENTED BY William Reed, Chair

REVIEW DATES SEC – April 27, 2021 | SENATE – May 4, 2021

VOTING METHOD In a single vote

RELEVANT POLICY/DOCUMENT [VI-1.60\(A\) – University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct](#)

NECESSARY APPROVALS Senate, President

ISSUE

In March 2019, a proposal was submitted recommending the development of a policy prohibiting consensual relationships between faculty and the students they supervise or instruct. The proposal stated that there is an inherent power imbalance between faculty and students involved in amorous/sexual relationships and that perceptions of retaliation or favoritism could be problematic. The University's Policy and Procedures on Sexual Harassment and Other Sexual Misconduct (VI-1.60[A]) "discourages" but does not prohibit these types of relationships. The proposal also suggested there is the potential liability for the University, which could ensue as a result of these relationships.

RECOMMENDATIONS

The Faculty Affairs Committee recommends that the University of Maryland Policy on Consensual Relationships (II-3.10[D]) as shown immediately following this report be adopted.

The Faculty Affairs Committee recommends that the University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct be amended as shown in the report in section XVI, Consensual Relationships and Professional Conduct by removing language that conflicts with principles in the proposed Consensual Relationships policy.

The Faculty Affairs Committee recommends that the University Senate consider further reviews related to consensual relationships across other constituency groups where a power imbalance may exist.

COMMITTEE WORK

The Faculty Affairs Committee (FAC) began an initial review of its charge in December 2019, and in November 2020, referred the charge to a subcommittee to complete the review and make a recommendation to the full committee. Initially, the FAC met with the Title IX Officer and Director of the Office of Civil Rights and Sexual Misconduct (OCRSM) and the proposer; consulted with its ex-officio representatives from the Office of Faculty Affairs and University Human Resources (UHR);

and reviewed policies and procedures related to consensual relationships between faculty and students at Big 10 and other peer institutions.

Early in the review, the FAC determined that the University should have a separate, stand-alone policy on consensual relationships and professional conduct that prohibits some relationships between faculty and students in addition to strongly discouraging other relationships. After a thorough review of peer institution policies and best practices, the subcommittee developed preliminary directions to serve as a foundation for developing a policy that includes a definition for consensual relationships; balanced consideration of the faculty-student relationship, prohibition of relationships with minors consistent with Maryland State law, prohibition of relationships where the faculty member can reasonably expect to have academic or supervisory authority over a student; faculty disclosure of existing relationships so a management plan can be developed; and a mechanism for third-parties to report violations. Key stakeholders and appropriate Senate committees were given an opportunity to provide feedback on the subcommittee's preliminary report.

Feedback on the subcommittee's preliminary directions ranged from advocating for a complete prohibition of dating and romantic relationships between faculty and students, especially undergraduate students, to asserting that a prohibition would be unnecessarily broad and intrusive on individuals' personal rights or may make one or both of the relationship participants undertake significant efforts to keep the relationship secret. The feedback suggested that the policy should concentrate on addressing the power differential between faculty and students and prohibit relationships when faculty, including graduate assistants, have academic or supervisory authority over students. However, none of the feedback suggested that the University should continue to not have a policy.

The subcommittee determined that a consensual relationships policy for the University should provide the following:

- Faculty should be prohibited from dating and romantic relationships with students when the faculty member has or can reasonably expect to have educational or supervisory authority over the students.
- The definition of educational and supervisory authority should be broad to make clear that such authority is not limited to classroom instruction or work supervision, and that the faculty member's authority and influence over students reaches far beyond those activities, particularly related to responsibilities such as providing professional guidance and recommendations.
- A provision that strongly discourages all dating and romantic relationships between faculty and students should be included in the policy.
- For relationships that are not prohibited, consensual relationships and marriages that existed before a faculty member's appointment at the University or before the approval of the Policy, the faculty member should disclose the relationship to their unit head(s), if the potential for the faculty member to exercise educational or supervisory authority over the relationship or marriage partner arises.

The subcommittee consulted with the OCRSM and with the Office of General Counsel. The subcommittee voted by email on April 24, 2021, to recommend the proposed Policy on Consensual Relationships immediately following this report to the Faculty Affairs Committee for its consideration and recommendation to the Senate.

The Faculty Affairs Committee reviewed the recommended policy and made a recommendation to revise the University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct be amended in section XVI, Consensual Relationships and Professional Conduct, by removing language that conflicts with principles in the proposed Consensual Relationships policy as specified in the report. On April 26, 2021, the Faculty Affairs Committee voted by email to approve the recommendations.

ALTERNATIVES

The Senate could choose not to accept the recommendations. However, the University would lose an opportunity to address the potential impacts of a dating or romantic relationship between faculty and students when the faculty member has educational or supervisory authority over the student.

RISKS

There are no risks to the University in adopting these recommendations.

FINANCIAL IMPLICATIONS

There are no known financial implications to adopting these recommendations.



Proposal to Establish a Consensual Relationships Policy

2020-2021 Committee

Will Reed (Chair)
John Bertot (Ex-Officio Provost’s Rep)
Michele Eastman (Ex-Officio President’s Rep)
Marc Pound (Ex-Officio CUSF Rep)
Jackie Richmond (Ex-Officio Director of UHR Rep)
Ellin Scholnick (Ex-Officio Ombuds Officer)
Saverio Giovacchini (Faculty Senator)
Tracy Huard (Faculty Senator)
Agisilaos Iliadis (Faculty Senator)
Nicole LaRonde (Faculty Senator)
Mark Fuge (Faculty)
Jessica O’Hara (Faculty)

Kevin Roy (Faculty)
Beth St. Jean (Faculty)
Wendy Stickle (Faculty)
Donald Webster (Faculty)
Mary Shelley (Staff)
Naette Lee (Graduate Student)
Autumn Perkey (Graduate Student)
Shawn Nijjar (Undergraduate Student)

Date of Submission

April 2021

BACKGROUND

In March 2019, a proposal was submitted recommending the development of a policy prohibiting consensual relationships between faculty and the students they supervise or instruct. The proposal suggested that a conflict of interest arises when faculty develop amorous/sexual relationships with students in their classes, in campus organizations, or in any situation in which the student might fear reprisals or expect special treatment. The proposal also stated that there is an inherent power imbalance between faculty and students and that perceptions of retaliation or favoritism could be problematic. There is also the potential liability for the University, which could ensue as a result of these relationships.

The proposal noted that the University’s Sexual Misconduct Policy “discourages” but does not prohibit these types of relationships. The proposal also included links to stand-alone consensual relationship policies at other institutions.

On April 4, 2019, the Senate Executive Committee (SEC) voted to charge the Faculty Affairs Committee (FAC) with review of the proposal (Appendix 2).

CURRENT POLICY

The University of Maryland Sexual Misconduct Policy & Procedures (IV.1.60[A]) (“Sexual Misconduct Policy”) in effect at the time that the proposal was submitted included a Consensual Relationships and Professional Conduct provision that stated:

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

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

The Policy as amended and approved on an interim basis by the President effective August 14, 2020, includes substantially the same language with minor technical revisions (Appendix 1). There is no prohibition on relationships between faculty and students, in this Policy or in any other University or University System of Maryland (USM) policy. Additionally, while the Policy states that individuals with supervisory or evaluative authority over the other relationship participant must inform their supervisor(s) of the relationship, failure to make the disclosure is not sufficient grounds to terminate employment, particularly when a tenured/tenure-track faculty member is one of the relationship participants.

COMMITTEE WORK

The Faculty Affairs Committee (FAC) began reviewing its charge in December 2019. During its initial consideration of the charge, the committee met with the Title IX Officer and Director of the Office of Civil Rights and Sexual Misconduct (OCRSM) to discuss the Consensual Relationships and Professional Conduct provision of the Sexual Misconduct Policy. It also consulted with its ex-officio representatives from the Office of Faculty Affairs and University Human Resources (UHR). The committee could not obtain information about how prevalent relationships between faculty and staff are at the University, because it is unusual for these relationships to be disclosed, despite the requirement for disclosure in the Sexual Misconduct Policy. Normally, relationships between faculty and students are exposed by a third-party who believes that the student is receiving favorable treatment or that the relationship is creating an uncomfortable or hostile environment. Occasionally, a relationship participant will disclose the relationship if the relationship falls apart or when one party feels pressured by the other. These situations may be reported to the OCRSM or UHR as potential complaints of Prohibited Conduct under the Sexual Misconduct Policy.

The FAC met with the proposer to learn more about the circumstances that led to the submission of the proposal. The proposer shared their experience with a relationship between a faculty member and a student in the faculty member's class, which was disclosed by other students in the class. The proposer stated that the Sexual Misconduct Policy did not provide sufficient guidance or authority for the Department Chair to address the situation fully.

The FAC reviewed policies and procedures related to consensual relationships between faculty and students at Big 10 and other peer institutions. The committee found that some institutions have policies that clearly prohibit romantic or sexual relationships between faculty and students, especially undergraduate students, and some institutions limit the prohibition to faculty who have academic or educational, evaluation, or supervision responsibilities over the student. In addition to defining circumstances in which relationships between faculty and students are prohibited, several policies include a statement that discourages or strongly discourages all relationships generally. For relationships that are not prohibited, some institutions require faculty to disclose relationships with students to a department head or administrator, either when they begin the relationship or when the faculty member is in a position to influence or make decisions that affect the evaluation and supervision of the student relationship participant.

Similar to the University of Maryland, a few institutions do not have a specific policy on relationships, and only include a statement in the Sexual Misconduct Policy that strongly discourages sexual relationships with students. A few other institutions address relationships between faculty and students in a Faculty Code of Conduct.

The FAC determined that the University should have a separate, stand-alone policy on consensual relationships and professional conduct that prohibits some relationships between faculty and students in addition to strongly discouraging other relationships.

Due to changes in University operations as a result of the COVID-19 pandemic in spring 2020, the FAC did not continue its work on the charge for the remainder of the semester. In fall 2020, the Senate leadership decided that it should form a standing subcommittee of the full Faculty Affairs Committee in order to try to distribute the substantial workload within the committee by referring specific items to the subcommittee and asking it to make a recommendation to the full committee. The charge on the proposal for a consensual relationships policy was among the matters referred to the new standing subcommittee of the FAC.

SUBCOMMITTEE WORK

The subcommittee began its work in late November 2020. In addition to reviewing the initial work by the FAC, the subcommittee reviewed several peer institution policies on consensual and prohibited relationships between faculty and students.

Since the proposal was related to relationships between faculty and students, the subcommittee focused its consultations and review of peer institution policies on relationships between these constituencies. Among the subcommittee's initial considerations for developing a consensual relationship policy was whether romantic, amorous, and intimate relationships between faculty and students should be prohibited completely, or if those relationships should only be prohibited under certain circumstances.

Peer Institution Findings

The subcommittee's initial work was informed in large part by its review of peer institution policies. The policies among the peer institutions had several variations of prohibitions on consensual relationships between faculty and students including:

- Prohibition of consensual relationships between faculty and undergraduate students;
- Prohibition of consensual relationships between faculty and any students (undergraduate and graduate) where educational or supervisory authority exists; and
- Prohibition of consensual relationships between faculty and students within the same academic unit, department, or discipline.

The specific breakdown of variations in policies across peer and Big10 institutions include the following:

- Four peer institutions prohibit dating, romantic, or sexual relationships between faculty and undergraduate students (UCLA, Michigan, Michigan St., Northwestern).
- One peer institution had a prohibition based on the age of the students, defined as under the age of 18 (UNC).

- The majority of the peer institutions prohibit consensual relationships between faculty and students, both undergraduate and graduate, where the faculty member has academic or supervisory authority over the student.
- Two peer institutions do not prohibit consensual relationships between faculty and students but they do require the disclosure of those relationships where there are evaluation or supervisory responsibilities between the relationship participants or where the relationship participants are in the same academic or work units even if the faculty does not have evaluative or supervisory authority over the student (Penn State, UC-Berkeley).
- No peer institutions have policies that prohibit consensual relationships between faculty and graduate students if there is not an educational, supervisory, or within department relationship between them.
- Several institutions had policies specifically related to graduate and teaching assistants and undergraduate students that prohibited consensual relationships when graduate and teaching assistants have educational or supervisory authority over undergraduate students.

Preliminary Directions

The subcommittee considered the FAC's initial review of the proposal and the peer institution data in order to develop preliminary directions in several key areas and get additional feedback that could guide its work on the policy. As part of this effort, the subcommittee reviewed the definitions of consensual relationships in peer institution policies; considered the importance of the faculty-student relationship and the responsibility that faculty have to provide exceptional educational, research, service, and employment experiences for students and program participants; and evaluated several options for the types of faculty and student interactions that the policy should address. The subcommittee considered prohibiting relationships with minors, as defined by the Maryland age of sexual consent, imposing a ban on dating or romantic relationships between faculty and students, and prohibiting dating or romantic relationships where faculty members are aware that they have or could reasonably expect to have an academic or supervisory authority over the other relationship participant. The subcommittee also discussed requirements for disclosing existing consensual relationships to a unit head; the potential for a management plan when relationship participants are in a situation where there may be a conflict of interest and potential mitigation strategies; and providing a means for third-party reporting to the next-level administrator to ensure that action is taken when reports are made.

Based on the subcommittee's review, it was able to discuss and develop the following preliminary directions that would serve as a foundation for developing a policy.

1. **Definition of Consensual Relationships:** The subcommittee felt that it was important for the policy to provide a definition of consensual relationships that would inform faculty and students of the kinds of interactions that would be affected by the Policy. The subcommittee wanted to avoid making the definition so broad that it could stifle appropriate interactions outside of formal academic activities between faculty and students and program participants, such as lunch outings and social hours. Therefore, the subcommittee defined consensual relationships as dating and romantic relationships, without including a reference to whether the relationship needed to be sexual in nature as well.
2. **Faculty-Student Relationships:** The subcommittee recognized that faculty members exercise professionalism and integrity in their interactions with students, and the proposed policy should not discourage or compromise their commitment to providing exceptional educational, research, service, and employment experiences for students and program participants.

However, the professional and educational relationships between faculty and students are an important aspect of students' experiences throughout their time at the University, and those relationships should be rooted in trust. It is critical that faculty not compromise the academic, educational, scholarly, and professional development of any students. Therefore, the subcommittee sought to recommend a policy that balanced these considerations.

3. Relationships with Minors: The subcommittee recommended a prohibition on relationships with minors to be consistent with the laws of the State of Maryland and the age of consent in the definition of statutory rape in the interim University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct ("Sexual Harassment Policy").
4. Educational & Supervisory Authority: The subcommittee included relationships where the faculty member can reasonably expect to have academic or supervisory authority over the other relationship participant, because these are likely easily identifiable situations for faculty to anticipate. The subcommittee defined academic authority to include duties and roles that include or influence instruction, research, and employment. Accordingly, in addition to faculty members, graduate assistants, and staff with educational or academic authority over students, such as advisors, would be covered by the policy.
5. Disclosure of Consensual Relationships: The subcommittee decided to require faculty members to disclose current or past consensual relationships to their next level administrator. This would allow the administrator and faculty member to develop a management plan that would ensure that the faculty member will not exercise academic or supervisory authority over the relationship participant. The management plan might require reassigning the relationship participant to a different class or lab, or recusing the faculty member from participating in evaluation decisions for the relationship participant. The initial policy proposal would also have required administrators to record management plans and to provide a report of the plans to deans, since administrators may change over time, and management plans should continue to provide guidance on matters that arise in the future. The management plan was not intended to be punitive; the goal of the plan would be to allow the student relationship participant to continue to have educational, research, and employment experiences without the potential for conflicts with professional and personal interests. The subcommittee also felt that it is important to eliminate actual or perceived compromise of the educational experiences of other students and program participants based on a faculty member's personal relationship with another student. Failure to disclose a relationship as well as participating in a relationship that is prohibited by the policy could subject a faculty member to disciplinary action. Any disciplinary proceeding and decisions would be subject to the existing University procedures.
6. Third-Party Reporting: The subcommittee also proposed that third parties with actual knowledge, observation, or good-faith belief of a relationship that violates the policy should be directed to make a report to the faculty member's next highest administrator. This would allow the administrator to decide whether the third party's report warranted further inquiry, and if so, how to address the inquiry and develop a management plan, if necessary.

Feedback Considered by the Subcommittee

The subcommittee's preliminary directions were taken to key stakeholders for feedback. To meet the elements of the charge, on January 21, 2021, the FAC Chair provided an update to the SEC on the subcommittee's work and the parameters for prohibited relationships that were being considered by the subcommittee. The FAC subcommittee also provided a preliminary report to the FAC and the Student Affairs Committee. These committees discussed the FAC subcommittee's proposed policy principles at their January 29, 2021 and February 25, 2021 meetings, respectively. Senators were

also offered the opportunity to provide feedback on the FAC subcommittee's preliminary report at the March 3, 2021 Senate meeting and through an online survey.

The feedback on the preliminary policy principles recommended by the subcommittee included suggestions that:

- The policy should ban dating and romantic relationships between faculty and undergraduate students because these relationships are contrary to and inherently undermine the University's obligation to create and sustain an educational environment in which students can flourish.
- Prohibiting all dating and romantic relationships would be overly broad. There is not a power differential consideration when faculty and students are from different disciplines and their only interaction may be in a social environment. A policy that prohibits these relationships outright would be intrusive on individuals' personal rights.
- Prohibiting all dating and romantic relationships between faculty and undergraduate students, would not stop the relationships from occurring, but instead, may make one or both of the relationship participants undertake significant efforts to keep the relationship secret.
- Relying on Maryland law to establish the age of consent at 16 years old is misplaced because there are high school students older than 16 years old who attend University programs, and it should not be permissible for a faculty member to have a relationship with a high school student even if the student is 16 years old or older or not subject to a faculty member's academic and supervisory authority.
- The power differential between faculty and students is a more important consideration than the age of the student. Therefore, the policy should address circumstances when faculty, including graduate assistants, have academic or supervisory authority over students.
- Faculty should be required to disclose dating and romantic relationships, including marriages with students, that existed before the faculty member's appointment to the University and a management plan should be implemented when those relationships exist.
- There should be a third-party reporting mechanism to the faculty member's dean, which provides a level of separation for student reporters who are concerned about retaliation from the department chair or there should be an anonymous online reporting system.

Subcommittee Recommendation

The subcommittee considered the feedback that it received in response to its preliminary report and also met with the proposer to discuss the principles it was considering. Based on that feedback, the subcommittee determined that the following general principles should be incorporated when developing a consensual relationships policy for the University:

- The policy should prohibit dating and romantic relationships when the faculty member has or can reasonably expect to have educational or supervisory authority over the students.
- The definition of educational and supervisory authority should be broad to make clear that such authority is not limited to classroom instruction or work supervision, and that the faculty member's authority and influence over students reaches far beyond those activities,

particularly related to responsibilities such as providing professional guidance and recommendations.

- Based on strong expressions of concern that students need to be protected from inappropriate interactions with faculty, a provision that strongly discourages all dating and romantic relationships between faculty and students should be included in the policy. The Sexual Harassment Policy includes a statement discouraging these relationships, and there are peer institutions that include a provision that discourages these relationships in their policies.
- For relationships that are not prohibited, consensual relationships and marriages that existed before a faculty member's appointment at the University or before the approval of the policy, the faculty member should disclose the relationship to their unit head(s), if the potential for the faculty member to exercise educational or supervisory authority over the relationship or marriage partner arises. This requirement is recommended to avoid the misinterpretation that the policy implies that such relationships between faculty and students are permissible even when educational or supervisory authority exists, as long as the relationship is disclosed. The obligation of a unit head should be to ensure that the faculty member will not be in a position to impact the educational and professional development of the student, in circumstances where the relationship is not prohibited. Fulfilling this obligation does not require a complex management plan and aligns with practices at other peer institutions, as well as concerns raised about imposing additional obligations on unit heads.

The subcommittee recognized that there are varying viewpoints by members of the campus community about whether faculty-student relationships should be completely prohibited or not or all of the possible options in between. While there was a lot of feedback on how the University should move forward with a consensual relationships policy and the parameters for such a policy, none of the feedback indicated that the University should continue to NOT have a policy at all. It is clear that inaction is not an appropriate option, so the subcommittee is presenting the proposed policy to begin to address the vacuum that currently exists. All of the peer and Big10 institutions have some form of a consensual relationships policy that requires disclosure at a minimum and in some limited cases, peers absolutely prohibit dating, romantic, and sexual relationships between faculty and undergraduate students. The subcommittee found that the University is very far behind on this issue compared to its peers and other Big10 institutions.

The subcommittee acknowledged that a policy cannot legislate appropriate values and interactions between faculty and students. The University's commitment should be reaffirmed through guidance for faculty and education that enhances and reinforces faculty members' awareness of the impact and influence that they have on the academic, professional, and overall development of students. The subcommittee also noted that there is more work to be done to address consensual relationships across other constituency groups, including faculty, staff, postdoctoral associates, and graduate students. Therefore, the subcommittee recommended that the Senate consider whether further reviews related to consensual relationships between other constituencies where a power imbalance may exist are needed.

The subcommittee consulted with the OCRSM on a proposed revision to the Sexual Harassment Policy to remove language that conflicted with the proposed consensual relationships policy. The subcommittee also consulted with the Office of General Counsel on the draft policy language. After due consideration, the subcommittee voted by email on April 24, 2021, to recommend the proposed Policy on Consensual Relationships immediately following this report to the Faculty Affairs Committee for its consideration and recommendation to the Senate. The Faculty Affairs Committee voted to approve the proposed policy and a recommendation on the Sexual Harassment Policy language on April 26, 2021.

RECOMMENDATIONS

The Faculty Affairs Committee recommends that the University of Maryland Policy on Consensual Relationships (II-3.10[D]) as shown immediately following this report be adopted.

The Faculty Affairs Committee recommends that the University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct be amended in section XVI. Consensual Relationships and Professional Conduct by removing language that conflicts with principles in the proposed Consensual Relationships policy as follows:

XVI. Consensual Relationships and Professional Conduct

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

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

The Faculty Affairs Committee recommends that the University Senate consider further reviews related to consensual relationships across other constituency groups where a power imbalance may exist.

APPENDICES

Appendix 1 — University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct (Amended and approved on an interim basis by the President effective August 14, 2020)

Appendix 2 — Charge from the Senate Executive Committee



II-3.10(D) UNIVERSITY OF MARYLAND POLICY ON CONSENSUAL RELATIONSHIPS BETWEEN FACULTY AND STUDENTS

Approved by the President May X, 2021

I. Purpose

The University of Maryland (UMD) strives to create and maintain a supportive, respectful, and inclusive community that empowers each individual to thrive in their scholarly and professional endeavors. This can only be achieved in an environment that fosters trust, civility, and mutual respect. The University is committed to its missions of teaching, research, and service and honors that commitment by preserving the faculty-student relationship and protecting the Student experience.

Faculty have a collective responsibility to support the experience of all Students and nurture Students' intellectual curiosity. They uphold that commitment by creating an environment that reinforces the highest professional and ethical standards. Relationships between Faculty and Students are an important aspect of a Student's experience as they learn, do research, and are mentored throughout their time at the University. That relationship should be rooted in trust and based on a commitment to the academic, scholarly, and professional development of all Students.

When situations arise that go beyond the traditional boundaries of the faculty-student relationship, the University is committed to protecting Students' interests. Faculty have authority and influence over the educational and professional development of Students. This inherent power imbalance makes relationships between Faculty and Students fundamentally unequal. These relationships can lead to a real or perceived exploitation of the power differential and may compromise the educational experience of all Students. While the University is equally committed to protecting Faculty interests regarding academic freedom, freedom of expression, and intellectual inquiry, these are best protected by a common understanding and avoidance of unprofessional relationships. To this end, the restrictions defined in this Policy create boundaries and expectations regarding faculty-student relationships.

II. Definitions

- A. "Educational or Supervisory Authority" means the power to control or influence a Student's academic experience, achievements, advancement, career and professional development, employment experiences, or extracurricular participation. Duties and activities related to Educational or Supervisory Authority include but are not limited to teaching and instruction, coaching, supervision or advising extracurricular activities, grading, evaluating, mentoring, supervising research, dissertations, or clinical participation, providing recommendations for employment, awards, or fellowships, and

participating in decisions on hiring, employment, compensation, promotion, and discipline.

- B. “Consensual Relationships” for the purposes of this Policy means relationships of a romantic, dating, and/or sexual nature entered into with the mutual agreement of both parties. Marriage is excluded from this definition.
- C. “Faculty” for the purposes of this Policy means all individuals with a Faculty title as defined in the University of Maryland Policy on Appointment, Promotion, and Tenure (II-1.00[A]), as well as staff and graduate assistants with Educational or Supervisory Authority over Students.
- D. “Marriage” for the purposes of this Policy means a union or domestic partnership between individuals as defined by Maryland State law or otherwise recognized by the State of Maryland.
- E. “Student(s)” means an individual(s) enrolled in or auditing a course(s) at the University or participating in a University-sponsored program.
- F. “Unit Head(s)” means the administrator(s) responsible for a department, center, institute, College or School, or a Division to which a Faculty member reports.

III. Policy

- A. The University strongly discourages any Consensual Relationships between Faculty and Students.
- B. Faculty who have or can reasonably expect to have Educational or Supervisory Authority over a Student are prohibited from dating or engaging in a romantic or sexual relationship with that Student. In addition to the inherent power imbalance of such relationships, there is the potential for conflicts of interest, coercion, exploitation, and the perception of favoritism and advantage that can compromise the educational and professional development experiences of all Students and the reputation and mission of the University.
- C. Faculty members involved in a Consensual Relationship that is not prohibited by the Policy or a Marriage must disclose the relationship to their Unit Head(s) if the potential for the Faculty member to exercise Educational or Supervisory Authority over a Student arises.
- D. Upon disclosure, Unit Heads must take the necessary steps to ensure that Faculty will not be in a position for the inherent power imbalance to impact the educational and professional development of the Student. These steps may include but are not limited to avoiding the assignment of duties that would allow Faculty to exercise or influence any Educational or Supervisory Authority over the Students with whom they are in a Marriage or Consensual Relationship with that is not prohibited by this Policy.

- E. This Policy does not supersede, replace, or circumvent any other policies at the University. All relationship participants are expected to comply with all University policies and procedures.

IV. Applicability

- A. This Policy applies to all Faculty with a Faculty title as defined in the University of Maryland Policy on Appointment, Promotion, and Tenure (II-1.00[A]), as well as staff and graduate assistants with Educational or Supervisory Authority over Students.
- B. Consensual Relationships and Marriages that pre-date the Faculty member's appointment at the University or the implementation of this Policy are required to be disclosed in accordance with section III.C of this Policy.

V. Reports by Third Parties

- A. Any member of the campus community who has reason to believe that a Faculty member is in violation of this Policy, is encouraged to report the concern in good faith to the Dean of the College/School in which the Faculty member belongs or through the University's Compliance Reporting System.
- B. Knowingly making false statements or submitting false reports is prohibited and may be grounds for disciplinary action under other University policies and procedures.

VI. Violations of the Policy

- A. Violations of this Policy are subject to disciplinary action, up to and including termination of employment or expulsion, in the case of graduate assistants.
- B. Any disciplinary action will be in accordance with the appropriate University policies.

VII. Record Keeping

- A. Unit Head(s) are responsible for maintaining records related to Faculty disclosures of Consensual Relationships and Marriages.
- B. Faculty records must be maintained in accordance with the University's Records Retention and Disposal Schedule.



VI-1.60(A) UNIVERSITY OF MARYLAND POLICY AND PROCEDURES ON SEXUAL HARASSMENT AND OTHER SEXUAL MISCONDUCT
(Approved on an interim basis October 13, 2014; Amended May 4, 2015; Amended October 1, 2015; Amended March 21, 2016; Amended May 13, 2016; Amended and approved on an interim basis by the President June 24, 2019; Amended and approved on December 12, 2019; Amended and approved on an interim basis by the President effective August 14, 2020¹)

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¹ This amendment is effective August 14, 2020. On May 6, 2020, the United States Department of Education released new Title IX regulations, effective August 14, 2020 (2020 Title IX Regulations). The 2020 Title IX Regulations require certain provisions of this amended Policy and Procedures. Should a court strike down, either temporarily or permanently, any portion of the 2020 Title IX Regulations, the University of Maryland may make modifications to this Policy and Procedures, which may become effective immediately. The University may also revert back to the December 12, 2019, version of this Policy and Procedures.

I. Purpose

The University of Maryland (University) is committed to creating and maintaining a working and learning environment free from all forms of Sexual Harassment,² Other Sexual Misconduct, and Retaliation. The University accomplishes this through training, education, prevention programs, policies and procedures that promote prompt reporting and response, provide support to persons alleged to be victimized, prohibit Retaliation, and implement timely, fair, and impartial investigations and resolutions that ensure due process and remedy Policy violations. Sexual Harassment, Other Sexual Misconduct, and Retaliation will not be tolerated in any form. This Prohibited Conduct corrupts the integrity of the educational process and work environment and violates the core mission and values of the University. Creating an environment free from this Prohibited Conduct is the responsibility of all members of the University community. The entire University community plays an important role in maintaining a respectful, inclusive, and safe working and learning environment. The University encourages bystander intervention amongst members of the campus community to help prevent harmful situations from occurring or escalating.

The University's comprehensive response includes responding to reports and complaints of Prohibited Conduct under this Policy and taking appropriate steps to eliminate Prohibited Conduct, prevent its recurrence, and address its effects. The purpose of this Policy and Procedures is to describe the Prohibited Conduct, describe how to report or file a complaint, articulate the procedures for investigating and resolving complaints, and identify the available resources and educational training programs.

Nothing in this Policy and Procedures should be interpreted to abridge academic freedom or principles of free speech. The University will not condone behavior that violates the freedom of speech, choice, assembly, or movement of other individuals or organizations. In short, responsible dissent carries with it sensitivity for the civil rights of others.

This Policy applies to all reports of Prohibited Conduct occurring on or after the effective date of this Policy. Where the date of the alleged Prohibited Conduct precedes the effective date of this Policy, the definitions of misconduct in existence at the time of the alleged incident(s) will be used. The Procedures under this Policy, however, will be used to investigate and resolve all reports made on or after the effective date of this Policy, regardless of when the alleged incident(s) occurred.

II. Applicability

This Policy prohibits Sexual Harassment, Other Sexual Misconduct, and Retaliation. This Prohibited Conduct may be a form of sex discrimination prohibited by federal and state discrimination laws, including Title IX of the Education Amendments of 1972 (Title IX) and Title VII of the Civil Rights Act of 1964 (Title VII).

This Policy addresses the University's obligations under Title IX. Title IX provides, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the

² Capitalized terms are defined in this Policy in the Definitions and Prohibited Conduct sections.

benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Federal regulations implementing Title IX require that the University follow certain procedures when the University obtains Actual Knowledge of Sexual Harassment in its Education Program or Activity against a person in the United States.

This Policy also addresses allegations of Other Sexual Misconduct, which includes Sexual Harassment that occurred against a person outside of the United States or not within an Education Program or Activity; Sexual Coercion; Sexual Exploitation; Sexual Intimidation; Attempted Sexual Assault; and Other Sex-based Offenses. Retaliation is also addressed.

This Policy applies to all members of the University community, including students, faculty, and staff. It also applies to contractors and other third parties who are engaged in any University Education Program or Activity, or who are otherwise interacting with the University, including, but not limited to volunteers, vendors, guests, and visitors. All University members are prohibited from engaging in, or assisting or abetting another’s engagement in Sexual Harassment, Other Sexual Misconduct, or Retaliation.

This Policy satisfies the University’s obligations under Maryland law and University System of Maryland Policy VI-1.60. To the extent any provision of this Policy conflicts with any other University policy, this Policy controls. Prohibited Conduct under this Policy may also be sex discrimination in violation of *VI-1.00(B) University of Maryland Non-Discrimination Policy and Procedures*. However, this Policy and Procedures supersedes *VI-1.00(B) University of Maryland Non-Discrimination Policy and Procedures* with respect to allegations of Prohibited Conduct addressed by this Policy. The University will respond to reports and complaints of Prohibited Conduct in accordance with this Policy and Procedures.

III. Jurisdiction

This Policy applies to reported acts of Prohibited Conduct committed by or against students, faculty, staff and third parties when:

- conduct occurs on University premises, in any University facility, or on property owned or controlled by the University;
- conduct occurs in the context of a University Education Program or Activity, including, but not limited to, University-sponsored academic, athletic, extracurricular, study abroad, research, online or internship programs or activities;
- conduct occurs outside the context of a University Education Program or Activity, but has continuing adverse effects on or creates a hostile environment for students, employees or third parties while on University premises or other property owned or controlled by the University or in any University Education Program or Activity; or
- conduct otherwise threatens the health and/or safety of University members.

The University does not have jurisdiction to investigate reported incidents involving members of the University community that occurred prior to the individual being enrolled at or employed by the University when the incident did not occur on campus or otherwise in connection with a University Education Program or Activity.

IV. Reporting

A. General

Any person may report Prohibited Conduct at any time by contacting the Title IX Coordinator/Officer (Title IX Officer) listed below, regardless of whether the reporting person is the Complainant.

Grace C. Karmioli, Esq., OCRSM Director and Title IX Coordinator/Officer

University of Maryland

Office of Civil Rights & Sexual Misconduct (OCRSM)

3101 Susquehanna Hall

4200 Lehigh Road

College Park, MD 20742-5025

E-mail: gkarmioli@umd.edu | titleixcoordinator@umd.edu

Telephone: 301-405-1142

Website: <http://www.ocrsm.umd.edu/>

Any person may also report Prohibited Conduct to the Office of Civil Rights & Sexual Misconduct (OCRSM), listed below, to a Responsible University Employee (RUE) including but not limited to University of Maryland Police Department (UMPD), or to a confidential resource. See Section IX of this Policy for more information on reporting to confidential resources.

A **Responsible University Employee** (see Section VI for definitions) must promptly notify the Title IX Officer of any report of Prohibited Conduct brought to their attention.³ The Title IX Officer works collaboratively with the reporting party or entity, making every effort to operate with discretion and maintain the privacy of the individuals involved. No employee (other than UMPD) is authorized to investigate or resolve reports of Prohibited Conduct without the involvement of the Title IX Officer.

OCRSM's contact information is:

Office of Civil Rights & Sexual Misconduct (OCRSM)

3101 Susquehanna Hall | 4200 Lehigh Road

College Park, MD 20742

Telephone: 301-405-1142

www.ocrsm.umd.edu | titleixcoordinator@umd.edu

An online reporting form is accessible on the OCRSM website 24 hours/7 days a week unless there is scheduled maintenance.

All persons are encouraged to report Prohibited Conduct promptly in order to maximize the University's ability to obtain evidence, identify potential witnesses, and conduct a

³ University employees may have additional reporting obligations under *VI-1.50(A) University of Maryland Policy on the Reporting of Suspected Child Abuse and Neglect*.

thorough, prompt, and impartial investigation. While there are no time limits to reporting Prohibited Conduct, if too much time has passed since the incident occurred, the delay may result in loss of relevant evidence and witness testimony, impairing the University's ability to respond and take appropriate action.

The Title IX Officer is responsible for coordinating the University's efforts to comply with Title IX and this Policy. The Title IX Officer leads, coordinates, and oversees OCRSM, including OCRSM's efforts regarding compliance training, prevention programming, and educational programs. The Title IX Officer is available to meet with any student, employee, or third party to answer any questions about this Policy.

To raise any concern involving bias or conflict of interest by the Title IX Officer, contact Georgina Dodge, Ph.D., Vice President for Diversity and Inclusion via email at gdodge1@umd.edu. Concerns of bias or a potential conflict of interest by any member involved in the resolution process should be raised with the Title IX Officer.

B. Reporting to the Police

Prohibited Conduct, particularly Sexual Assault, may be a crime. The University will assist Complainants who wish to report Prohibited Conduct to law enforcement authorities, including UMPD 24 hours a day/7 days a week. Representatives of the OCRSM, the Office of Student Conduct (OSC), the Department of Resident Life's Office of Rights and Responsibilities (R&R), and Campus Advocates Respond and Educate (CARE) to Stop Violence Office in the University Health Center are available to assist students with reporting to UMPD.

UMPD will also assist Complainants in notifying other law enforcement authorities in other jurisdictions, as appropriate. To report to UMPD, please call 301-405-3333 or 911. Callers may also dial 301-405-3555 or via mobile phone #3333. Regardless of where the incident occurred **Call 911** in an emergency.

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

UMPD are Responsible University Employees under this Policy and are required to notify the Title IX Officer of any report of Prohibited Conduct.

C. Preservation of Evidence for Other Proceedings

In addition to prompt reporting, the preservation of physical and other evidence may be important to prove criminal conduct or to obtain a civil or criminal order of protection.

D. Clery Act Timely Warnings

If a report of Prohibited Conduct discloses a serious and ongoing threat to the University community, UMPD may issue a timely warning of the conduct in compliance with the Clery Act in the interest of the health and safety of the University community. This notice will not contain any personally identifying information related to the Parties.

V. Amnesty for Students Who Report Prohibited Conduct

The University recognizes that a student who is under the influence of alcohol and/or drugs when an incident of Prohibited Conduct occurs may be reluctant to report the Prohibited Conduct out of concern that the student may face disciplinary actions for engaging in prohibited alcohol or drug use. As such, a student who reports Prohibited Conduct to the University or law enforcement, or who participates in an investigation either as a Complainant or witness, will not face disciplinary action for violating University drug and alcohol policies.

This Amnesty provision applies only when the University determines that:

1. the drug/alcohol violation occurred during or near the time of the reported Prohibited Conduct;
2. the student acted in good faith in reporting or participating as a witness; and
3. the violation was not likely to place the health or safety of another individual at risk.

VI. Definitions

For purposes of this Policy and Procedures, the following definitions apply:

“Actual Knowledge” means notice of Sexual Harassment or allegations of Sexual Harassment to the Title IX Officer or any University official who has authority to institute corrective measures on behalf of the University.

“Advisor” means a person chosen by a Party to provide advice and consultation to that Party, in accordance with this Policy and Procedures. An Advisor may be an attorney or another individual. An Advisor cannot be a witness or provide evidence in a case. A Party’s Advisor also conducts cross-examination on behalf of that Party at a Hearing, if applicable, in accordance with this Policy and Procedures. An Advisor shall not be an active participant or speak on behalf of a Party except for the purpose of providing cross-examination at a Hearing. If a Party does not have an Advisor, the University will provide without fee or charge to that Party, an Advisor of the University’s choice, to conduct cross-examination on behalf of that Party; an Advisor appointed by the University acts in a confidential capacity on behalf of the Party and is not otherwise involved in the proceedings.

“Appellate Hearing Officer” means an individual designated to review decisions concerning responsibility and sanctions, based on the Respondent’s status as a student, staff member, or faculty member. Appellate Hearing Officers shall have had no previous involvement with the substance of the Formal Complaint.

“Complainant” means the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

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

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

“Day” means a business day when the University is not closed.

“Education Program or Activity” means all of the University’s operations (including but not limited to employment); locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the Prohibited Conduct occurs; and also includes any building owned or controlled by a student organization that is officially recognized by the University.

“Formal Complaint” means a Document filed by a Complainant or signed by the Title IX Officer alleging Prohibited Conduct against a Respondent and requesting that the University proceed with the resolution process. A Formal Complaint may be filed with the Title IX Officer in person, by mail, by e-mail, or any additional method designated by the University in accordance with the Procedures.

- **“Document filed by a Complainant”** means a document or electronic submission that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Officer signs a Formal Complaint, the Title IX Officer is not a Complainant or otherwise a Party.

“Hearing” means a live, formal proceeding attended by the Parties in which evidence is presented, witnesses are heard, and cross-examination occurs, prior to the Hearing Officer’s decision concerning responsibility and Sanctions, if applicable.

“Hearing Officer” means an individual designated to preside over the Hearing and has decision-making and sanctioning authority within the adjudication process.

“Incapacitated” means an individual’s decision-making ability is impaired such that the individual lacks the capacity to understand the “who, what, where, why, or how” of their sexual interaction. Incapacitation may result from sleep, unconsciousness, intermittent consciousness, physical restraint, or any other state where the individual is unaware that sexual contact is occurring. Incapacitation may also exist because of a temporary or permanent mental or developmental disability that impairs the ability to Consent to sexual contact. Alcohol or drug use is one of the primary causes of Incapacitation. Where alcohol or drug use is involved, Incapacitation is a state beyond intoxication, impairment in judgment, or “drunkenness.” Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is Incapacitated, and therefore unable to give Consent, requires an assessment of whether the consumption of alcohol or other drugs has rendered the individual physically helpless or substantially incapable of:

- making decisions about the potential consequences of sexual contact;
- appraising the nature of one’s own conduct;
- communicating Consent to sexual contact; or
- communicating unwillingness to engage in sexual contact.

“Informal Resolution” means a broad range of conflict resolution strategies, including, but not limited to, mediation, Respondent acknowledgement of responsibility, and/or negotiated interventions and remedies.

“Investigator” means a professionally trained University staff member or third-party contractor designated to conduct an impartial, fair, and unbiased investigation into an alleged violation of this Policy.

“No Contact Order” means an official directive that serves as notice to an individual that the individual must not have verbal, electronic, written, or third-party communications with another individual.

“Party” means the Complainant or the Respondent (collectively, the “Parties”).

“Preponderance of the Evidence” means that it is more likely than not that a Policy violation has occurred.

“Remedies” means actions designed to restore or preserve the Complainant’s equal access to the University’s Education Program or Activity. Remedies are similar to Supportive Measures but may be punitive and burden the Respondent.

“Respondent” means the individual alleged to have engaged in Prohibited Conduct under this Policy.

“Responsible University Employee” means all University administrators, supervisors, faculty

members, UMPD, athletic coaches, athletic trainers, resident assistants, and first responders, who are not confidential resources.

“Sanctions” means disciplinary and other consequences imposed on a Respondent who is found to have violated this Policy.

“Support Person” means a person chosen by the Complainant or Respondent to provide emotional, logistical, or other kinds of assistance. 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 or a witness, and the Parties must speak for themselves.

“Supportive Measures” mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent to restore or preserve equal access to Education Programs or Activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University’s educational environment, or to deter Prohibited Conduct under this Policy.

VII. Prohibited Conduct

This Policy prohibits Sexual Harassment, Other Sexual Misconduct, and Retaliation as set forth below. Prohibited Conduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Prohibited Conduct can be committed by any person, regardless of gender identity, and can occur between people of the same or different sex, sexual orientation, or gender expression.

A. Sexual Harassment⁴ means conduct on the basis of sex that satisfies one or more of the following:

- 1. Quid Pro Quo:** An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct.
- 2. Hostile Environment:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s Education Program or Activity.
- 3. Sexual Assault:** An offense classified as a sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sex Offenses are any sexual act including Rape, Sodomy, Sexual Assault With An Object, or Fondling directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent; also, unlawful sexual intercourse (Incest or Statutory Rape).

⁴ See 34 C.F.R. § 106.30 (defining “Sexual Harassment” under Title IX).

- a. **Rape:** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.
 - b. **Sodomy:** Oral or anal sexual intercourse with another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.
 - c. **Sexual Assault With An Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.
 - d. **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification without the Consent of the victim, including instances where the victim is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.
 - e. **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - f. **Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent.⁵
4. **Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on a consideration of the following factors:
- a. the length of the relationship;
 - b. the type of relationship; and
 - c. the frequency of interaction between the persons involved in the relationship.
5. **Domestic Violence:** Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Maryland, or by any other person against an adult or youth Complainant protected from that person's acts under the domestic or family violence laws of Maryland.
6. **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- a. fear for their own safety or the safety of others; or
 - b. suffer substantial emotional distress.

⁵ The statutory age of consent in Maryland is 16. *See* Md. Code Ann., Crim. Law §§ 3-301 to -307.

B. Other Sexual Misconduct means the following conduct:

1. **Sexual Harassment** that occurred against a person outside of the United States or not within an Education Program or Activity.
2. **Sexual Coercion:** The use of unreasonable pressure in an effort to compel another individual to initiate or continue sexual activity against the individual's will. A person's words or conduct are sufficient to constitute Sexual Coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Sexual Coercion includes but is not limited to intimidation, manipulation, express or implied threats of emotional or physical harm, and/or blackmail. Examples of Sexual Coercion include but are not limited to causing the deliberate Incapacitation of another person; conditioning an academic benefit or employment advantage on submission to the sexual contact; threatening to harm oneself if the other party does not engage in sexual contact; or threatening to disclose an individual's sexual orientation, gender identity, gender expression, or other personal sensitive information if the other party does not engage in the sexual contact.
3. **Sexual Exploitation:** Taking non-consensual or abusive sexual advantage of another person for one's own advantage or benefit or for the advantage or benefit of anyone other than the person being exploited.
4. **Sexual Intimidation:** Threatening behavior of a sexual nature directed at another person, such as threatening to sexually assault another person or engaging in indecent exposure.
5. **Attempted Sexual Assault:** An attempt to commit Sexual Assault.
6. **Other Sex-Based Offenses:** Unwelcome sexual advances, unwelcome requests for sexual favors, or other behavior of a sexual or gender-based nature where:
 - a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, evaluation of academic work, or participation in a University-sponsored educational program or activity;
 - b. submission to or rejection of such conduct by an individual is used as the basis for an academic, employment, or activity or program participation decision affecting that individual; or
 - c. such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance, i.e., it is sufficiently severe or pervasive to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment.

C. Retaliation means intimidating, threatening, coercing, or discriminating against, or otherwise taking an adverse action against an individual for the purpose of interfering with any right or privilege secured by law or University policy relating to Prohibited Conduct, or because an individual has made a report, filed a complaint, testified, assisted,

participated or refused to participate in any manner in an investigation, proceeding, or hearing related to Prohibited Conduct. Adverse actions include but are not limited to impeding an individual's academic advancement; terminating, refusing to hire, or refusing to promote an individual; or transferring or assigning an individual to a lesser position in terms of wages, hours, job classification, or job security. Retaliation includes retaliatory harassment. Adverse actions, including charges against an individual for violations of other University policies that do not involve sex discrimination or Prohibited Conduct, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of Prohibited Conduct, for the purpose of interfering with any right or privilege secured by law, constitutes Retaliation. However, charging an individual with a violation of other University policies for making a materially false statement in bad faith in the course of a proceeding does not constitute Retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any Party made a materially false statement in bad faith. The exercise of rights protected under the First Amendment does not constitute Retaliation. The University will keep confidential, to the extent permitted by the Family Educational Rights and Privacy Act (FERPA), the identity of any individual who has made a report of Prohibited Conduct.

VIII. Sanctions

As further explained in the Procedures, Sanctions for Respondents determined to have violated this Policy include, but are not limited to, the following:

Students. Students found in violation of this Policy are subject to Sanctions such as dismissal from the University (suspension or expulsion), removal from University housing, disciplinary probation, and other sanctions such as community service and mandatory and continuing participation in training on Prohibited Conduct and education programming, depending on the circumstances and nature of the violation.

Employees. Employees found in violation of this Policy are subject to Sanctions ranging from a written reprimand up to and including separation from employment, depending on the circumstances and nature of the violation.

IX. Confidential Resources

Confidential resources on and off campus assist Parties in navigating potential advocacy, therapy, counseling, and emotional support services. If a person desires to keep an incident of Prohibited Conduct confidential, the person should speak with confidential resources.

Disclosures or reports made to individuals or entities other than confidential resources may not be confidential. For instance, should a member of the University community discuss an incident of Prohibited Conduct with a University administrator, supervisor, faculty member, UMPD, athletic coach, athletic trainer, resident assistant, or first responder who is not a confidential resource, those persons are deemed Responsible University Employees and, as such, are obligated pursuant to this Policy to report the Prohibited Conduct to the Title IX Officer.

Unless there is a lawful basis for disclosure, such as reported child abuse or an imminent risk to health or safety, confidentiality applies when persons seek services from the following resources:

A. University Confidential Resources

Campus Advocates Respond and Educate (CARE) to Stop Violence

University Health Center
3983 Campus Drive
College Park, MD 20742
Telephone: 301-314-2222
24/7 Crisis Line (call) 301-741-3442
Website: www.health.umd.edu/care
Email: uhc-care@umd.edu

This service is a free and confidential resource that provides support, assistance, and advocacy to any member of the University community impacted by Prohibited Conduct. Its mission is to respond to incidents of Sexual Harassment and Other Sexual Misconduct.

Faculty Staff Assistance Program (FSAP)

University Health Center
3983 Campus Drive
College Park, MD 20742
Telephone: 301-314-8170 or 301-314-8099
Website: health.umd.edu/fsap
Email: Tom Ruggieri ruggieri@umd.edu or Joan Bellsey jbellsey@umd.edu

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

University Counseling Center

1101 Shoemaker Building
4281 Chapel Lane
College Park, MD 20742
Telephone: 301-314-7651
After Hours Crisis Support: 301-314-7651
Website: www.counseling.umd.edu

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

University Health Center (UHC)

Medical & Behavioral Health
3983 Campus Drive
College Park, MD 20742
Telephone: 301-314-8106
Website: <https://health.umd.edu/behavioral-health>

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

Campus Chaplains

Telephone: 301-405-8450 or 301-314-9866
Website: http://thestamp.umd.edu/memorial_chapel/chaplains

The Campus Chaplains represent faith communities and work collectively to serve the spiritual needs of all members of the University community. Contact information for Chaplains is listed on the website referenced above.

B. Confidential Resources Off-Campus include, but are not limited to:

Domestic Violence and Sexual Assault Center at UM Prince George's Hospital

3001 Hospital Drive, Cheverly, MD 20785
Help Hotline: 301-618-3154 – 24-hour Hotline or 24 hours/7 days a week

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

Maryland Coalition Against Sexual Assault (MCASA)

Statewide Sexual Assault Information and Referral Helpline: 1-800-983-RAPE (4673)
Website: <https://mcasa.org/>

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

Maryland Network against Domestic Violence (MNADV)

4601 Presidents Drive, Suite 300
Lanham, MD 20706
Statewide Helpline: 1-800-MD-HELPS (43577) (Monday-Friday, 9:00 a.m. – 5:00 p.m.)
MNADV Office: 301-429-3601

Email: info@mnadv.org
Website: <https://mnadv.org/>

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

RAINN National Sexual Assault Crisis Hotline

Help Hotline: 800-656-HOPE (4673) – 24-hour Hotline or 24 hours/7 days a week
Website: <https://www.rainn.org/>

RAINN (Rape, Abuse & Incest National Network) is the nation’s largest anti-sexual violence organization.

X. Co-Occurring Criminal Action

Proceeding with a University resolution of Prohibited Conduct under this Policy and Procedures is independent of any criminal investigation or proceeding. Reporting to law enforcement does not preclude a person from proceeding with a report or Formal Complaint of Prohibited Conduct under this Policy. The University is required to conduct an investigation in a timely manner, which means, in most cases, the University will not wait until a criminal investigation or proceeding is concluded before conducting its own investigation, implementing Supportive Measures, and taking appropriate action.

However, at the request of law enforcement, the Title IX Officer may defer its fact gathering until the initial stages of a criminal investigation are complete. If such a request is made by UMPD, then UMPD will submit the request in writing and the Complainant will be notified. In addition, when possible, in cases where there is a co-occurring criminal investigation by UMPD, Prince George’s County Police, or the local prosecutor’s office, the Title IX Officer will work collaboratively and supportively with each respective agency within the parameters outlined above. The Title IX Officer will communicate any necessary delays in the University’s investigative process to both parties in the event of a deferral.

XI. Rights of Parties

Parties will be treated with dignity, respect, and sensitivity by University officials during all phases of the process. The accompanying Procedures are designed to allow for a fair and impartial investigation, as well as prompt and equitable proceedings and resolutions that provide an opportunity for Parties to be heard.

Parties will be given timely written notice of:

- The reported violation, including the date, time and location, if known, of the alleged violation, and the range of potential Sanctions associated with the alleged violation;
- Their rights and responsibilities under this Policy and information regarding other civil

- and criminal options;
- The date, time, and location of each Hearing, meeting, or interview that the Party is required or permitted to attend;
- The final determination made by the Hearing Officer regarding whether a Policy violation occurred and the basis for the determination;
- Any Sanction imposed, as required by law; and
- The rights to appeal and a description of the appeal process.

Parties will be entitled to participate in the investigation and adjudication of the Formal Complaint in accordance with the Procedures. Parties will be provided with:

- Access to the case file and evidence regarding the incident obtained by the University during the investigation or considered by the Hearing Officer, with personally identifiable or other information redacted as required by applicable law;
- An opportunity to be heard through the process;
- An opportunity to offer testimony at a Hearing;
- An opportunity to submit evidence, witness lists, and suggest specific questions to be posed to the other Party during the investigation, or to the other Party at a Hearing through the Party's Advisor;
- An opportunity to review testimony electronically or in a way in which the Parties are not required to be in the physical presence of one another;
- An opportunity to review and provide written responses to draft and final investigation reports;
- An opportunity to participate at a Hearing without being required to be in the physical presence of the other Party;
- An opportunity to appeal a determination and/or Sanction; and
- Notice, presented in an appropriate and sensitive format, before the start of the resolution process, of:
 - The Party's right to the assistance of an Advisor, including an attorney or advocate;
 - The legal service organizations and referral services available to the Party; and
 - The Party's right to have a Support Person of the Party's choice at any Hearing, meeting, or interview.

XII. False Statements

Knowingly making false statements or knowingly submitting false information under this Policy and Procedures is prohibited.

XIII. Legal Representation Fund for Title IX Proceedings (Students Only)

Student Complainants and Respondents may elect to retain an attorney to serve as their Advisor, though assistance by an attorney is not required. The Maryland Higher Education Commission (MHEC) has developed resources to assist current or former students in retaining an attorney to serve as an Advisor at no or low cost to the student. MHEC provides a list of licensed attorneys who have indicated that they may represent students in Title IX proceedings on a pro bono basis or for reduced legal fees. A student's attorney may seek reimbursement of certain legal costs and fees from MHEC's Legal Representation Fund for Title IX Proceedings, subject to the

availability of funding. More information is available on MHEC's website.

XIV. Emergency Removals and Other Interim Measures

A. Student Respondents

An emergency removal (which may take the form of an interim suspension) is for the purpose of addressing imminent threats posed to any person's physical health or safety, which might arise out of reported Prohibited Conduct. The University may undertake emergency removal of a student Respondent for reasons arising from the alleged Prohibited Conduct when the University:

1. undertakes an individualized safety and risk analysis;
2. concludes that there is an immediate threat to the physical health or safety of any student or other individual arising from the alleged Prohibited Conduct; and
3. provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

The University will not remove a student from the University based solely on an accusation. The student will be offered an opportunity to meet with the Director of Student Conduct or the Title IX Officer to review the reliability of the information within five (5) Days from the effective date of the emergency removal. However, there is no guarantee that the student will be permitted to return to campus.

The University may impose an interim disciplinary suspension on a student Respondent in accordance with the *Code of Student Conduct* for reasons not arising from the alleged Prohibited Conduct.

B. Staff and Faculty Respondents

The University in consultation with the Title IX Officer, UMPD, an employee's supervisor and applicable campus or departmental Human Resource office may take interim measures such as changing a Respondent's work responsibilities or work location or placing the Respondent on leave during the resolution process. Such action may be appropriate when there is a legitimate concern that without interim measures:

1. the Respondent will engage in prohibited conduct while the investigation is ongoing; or
2. the Respondent would be unduly disruptive to University members or University activities or programs.

C. Third-Party Respondents

University members who are neither students nor employees may be removed from their University role or a University program as an interim measure during the adjudication process at the discretion of the University and in consultation with the Title IX Officer.

XV. Consensual Relationships and Professional Conduct

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

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

XVI. Training

A. Prevention and Awareness Education

The University will develop and implement preventive education, directed toward both employees and students, to help reduce the occurrence of Prohibited Conduct. At a minimum, these educational initiatives must contain information regarding what constitutes Sexual Harassment, definitions of consent and Prohibited Conduct, the University's Procedures, bystander intervention, risk reduction, and the consequences of engaging in Prohibited Conduct. These educational initiatives shall be for all incoming students and new employees. The University will also develop ongoing prevention and awareness campaigns for all students and employees addressing, at a minimum, the same information. Educational initiatives for employees shall comply with Md. Code Ann., State Pers. & Pens. § 2-203.1.

B. Training for Personnel Involved in Response and Resolution

All persons involved in responding to or resolving Prohibited Conduct reports will participate in training in handling complaints of Prohibited Conduct under this Policy. The University will make these training materials publicly available on its website.

The University will ensure that Title IX Officers, Investigators, Hearing Officers, Appellate Hearing Officers, and any person who facilitates an Informal Resolution process, receive training on the following: the definition of Prohibited Conduct; the scope of the University's Education Program or Activity; how to conduct a resolution process including investigation, hearings, appeals, and Informal Resolution, as applicable; how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; technology to be used at a live hearing; and issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant. Any materials used to train Investigators will not rely on sex stereotypes and will promote impartial resolutions

of Formal Complaints under this Policy.

XVII. Records Retention

The University will maintain for a minimum of seven (7) years, records of the following:

- 1. Investigations and Determinations.** Each Sexual Harassment investigation, including any determination regarding responsibility;
- 2. Recordings and Transcripts.** Any audio or audiovisual recording or transcript required;
- 3. Sanctions.** Any Sanctions imposed on the Respondent;
- 4. Remedies.** Any Remedies provided to the Complainant designed to restore or preserve equal access to the Education Program or Activity;
- 5. Appeals.** Any appeal and the result thereof;
- 6. Informal Resolutions.** Any Informal Resolution and the result therefrom;
- 7. Training Materials.** All materials used to train Title IX Officers, Investigators, Hearing Officers, and any person who facilitates an Informal Resolution process; and
- 8. Supportive Measures.** Any Supportive Measures, taken in response to a report or Formal Complaint of Prohibited Conduct. In each instance, the University must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to its Education Program or Activity. If the University does not provide a Complainant with Supportive Measures, then it must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the University in the future from providing additional explanations or detailing additional measures taken.

XVIII. External Government Agencies

Employee complaints relating to Prohibited Conduct may be directed to:

Equal Employment Opportunity Commission (EEOC)
GH Fallon Federal Building 31 Hopkins Plaza, Suite 1432
Baltimore, MD 21201
Telephone: 1-800-669-4000
Fax: 410-209-2221
TTY: 1-800-669-6820
Website: <https://egov.eeoc.gov/eas/>

Maryland Commission on Civil Rights (MCCR)

William Donald Schaefer Tower

6 Saint Paul Street, Ninth Floor

Baltimore, MD 21202-1631

Telephone: 410-767-8600

Fax: 410-333-1841

TTY: 410-333-1737

Website: <http://mccr.maryland.gov/>

E-mail: mccr@maryland.gov

Student or employee complaints relating to Prohibited Conduct may be directed to:

Office for Civil Rights (OCR)

U.S. Department of Education

The Wanamaker Building

100 Penn Square East, Suite 515

Philadelphia, PA 19107-3323

Telephone: 215-656-8541

Fax: 215-656-8605

TDD: 800-877-8339

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

E-mail: OCR.Philadelphia@ed.gov

UNIVERSITY OF MARYLAND PROCEDURES FOR INVESTIGATING AND RESOLVING ALLEGATIONS OF SEXUAL HARASSMENT AND OTHER SEXUAL MISCONDUCT

These Procedures are part of the *VI-1.60(A) University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct* and are the exclusive procedures that govern the handling of all reports or complaints of Prohibited Conduct under the Policy.

I. Anticipated Timelines

The University's goals are to provide equal educational opportunities, promote campus safety, and remedy the effects of Prohibited Conduct. Good faith efforts will be made to complete Informal Resolutions, investigations and the adjudication process, if any, in a prompt, fair, and impartial manner. The Office of Civil Rights & Sexual Misconduct (OCRSM) will conduct any investigation as promptly as possible under the circumstances, taking into account the complexity of the allegations, the complexity of the investigation and resolution, the severity and extent of the alleged misconduct, the number and availability of witnesses, the University's calendar, and/or other unforeseen circumstances. The University seeks to take appropriate action, including investigation and resolution of Formal Complaints, generally within one hundred twenty (120) Days, by balancing principles of thoroughness and fundamental fairness from when the Formal Complaint is filed. An extension of the referenced timeframe may be required for good cause to ensure the integrity and thoroughness of the investigation.

The Title IX Officer or designee may extend the time frames set forth in this Policy and Procedures for good cause, with written notice of the extension to both Parties and the reason(s) for the delay. Written requests for delays by Parties may be considered. Factors considered in granting or denying an extension may include considerations such as, but not limited to, the following: the absence of a Party, a Party's Advisor, or a witness and/or the need for language assistance or accommodations of disabilities.

II. Right to Support Person and Advisor

A Party may be accompanied at any meeting held by the Title IX Officer or designee under these Procedures by up to two (2) people, including one (1) Support Person, and one (1) Advisor. When a Party wishes to be accompanied by a Support Person or Advisor to a meeting, the Party must notify the OCRSM or the Title IX Officer or designee in advance. Parties may select a Support Person or Advisor at any point before the conclusion of the resolution process.

Throughout the process, the Title IX Officer or designee will communicate and correspond directly with the Parties, not indirectly through a Support Person or Advisor.

Prior to meetings and hearing, all Support Persons and Advisors must review non-Party participation requirements, which define their respective roles, appropriate decorum, and confidentiality obligations relative to the proceedings. These requirements may be obtained from the Office of Student Conduct (OSC), or online at the OCRSM website. Parties must ensure that Support Persons and Advisors follow these non-Party participation requirements.

III. Report Intake and Formal Complaint

A. Receipt of Report of Prohibited Conduct

Upon receipt of a report alleging Prohibited Conduct from a Complainant, OCRSM will provide written acknowledgement of receipt of the report to the Complainant, if known, and include: a copy of the Policy and Procedures, options under the resolution process, and notice of Rights and Responsibilities.

The Complainant will be informed of available community and campus resources and services; Supportive Measures as specified in Section III.C of these Procedures; 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; and the University's prohibition against Retaliation.

If the report is received from someone who is not the Complainant or the Respondent, OCRSM will provide written acknowledgement of receipt of the report and take appropriate action as the information provided allows.

Receipt of a report alleging Prohibited Conduct shall not constitute the filing of a Formal Complaint under this Policy.

As explained more fully below, the Complainant may: ask OCRSM to take no further action beyond offering Supportive Measures, or file a Formal Complaint.

B. Intake and Initial Assessment of Report

OCRSM will contact the Complainant to conduct an intake and initial assessment, which will determine whether the reported conduct, if substantiated, would constitute a potential violation of this Policy. The Complainant can choose whether or not to participate with the intake and initial assessment process. If the Complainant opts not to participate, OCRSM may be limited in its ability to assess the report. The Complainant will have an opportunity to ask questions about options and resources and seek additional information. OCRSM will attempt to gather information that will enable OCRSM, in consultation with other appropriate University offices, to:

1. Assess a complainant's request for Supportive Measures;
2. Assess the nature and circumstances reported;
3. Assess jurisdictional concerns regarding each Party;
4. Assess the safety of the Complainant and of the University community;
5. Implement any appropriate Supportive Measures;

6. Assess for pattern evidence or other similar conduct by the Respondent as relevant to the safety assessment;
7. Assess the Complainant's expressed preference regarding resolution, including any request that no further action be taken;
8. Assess any request by the Complainant for confidentiality or anonymity; and
9. Assess the reported conduct for possible referral to UMPD for a timely warning under the Clery Act.

When the initial assessment determines the alleged conduct would not constitute a potential violation under this Policy if substantiated, the Title IX Officer may try to resolve an issue without the filing of a Formal Complaint. The alleged conduct may also violate other University policies, and the report may be referred to another University process and/or office, including but not limited to the following: *VI-1.00(B) University of Maryland Non-Discrimination Policy and Procedures*, the Office of Student Conduct, Human Resources, and/or Faculty Affairs, as appropriate.

C. Supportive Measures

OCRSM, in consultation with other appropriate University officials, facilitates Supportive Measures, which are available to the Parties upon receiving a report or Formal Complaint alleging Prohibited Conduct. OCRSM will consider the Parties' wishes with respect to planning and implementing the Supportive Measures. OCRSM will maintain the reasonable confidentiality of the Supportive Measures, provided that this does not impair the ability to provide the Supportive Measures. OCRSM will act to ensure as minimal an academic and employment impact on the Parties as possible and implement Supportive Measures in a way that does not unreasonably burden either Party.

Supportive Measures include, but are not limited to:

Academic Accommodations

- Assistance in transferring to another section of a lecture or laboratory
- Assistance in arranging for incompletes
- Assistance with leave of absence
- Assistance with withdrawal from coursework
- Assistance with withdrawal from campus
- Assistance with communicating with faculty
- Rearranging class schedules
- Re-scheduling exams
- Extensions of academic deadlines
- Re-taking a course
- Dropping a course
- Academic support such as tutoring or other course/program related adjustments

- Facilitating adjustments so complainants and respondents do not share same classes

Housing Accommodations

- Facilitating changes in on-campus housing location to alternate housing
- Assistance in exploring alternative housing off-campus

Employment Accommodations

- Arranging for alternate University employment
- Arranging different work shifts temporary assignment, if appropriate, to other work duties and responsibilities, or other work locations, or other work groups/teams or alternative supervision/management
- Extensions of work deadlines

Care and Support

- Facilitating assistance for an individual to obtain medical, healthcare, advocacy, and therapy services
- Referral to the Faculty Staff Assistance Program (FSAP)
- Referral to community-based providers

Community Education

- Education to the community or community subgroup(s)
- Training
- Bystander Intervention Program

Safety

- Providing campus safety escorts
- Providing transportation accommodations
- Increased security and monitoring of certain areas of the campus
- Transportation and parking arrangements
- Assistance in making a report to law enforcement or obtaining a protective order
- Safety planning
- Assisting a person in requesting that directory information be removed from public sources

University Referrals

- Referral to Visa and Immigration assistance
- Assistance in arranging appointments with University resources
- Assistance with exploring changes in class and extra-curricular schedules
- Referral to student financial aid counseling

Other

- No Contact Order
- Denial of Access to campus grounds and/or buildings

OCRSM will promptly inform the Respondent of any Supportive Measures that will directly impact the Respondent.

The Title IX Officer or designee retains discretion to provide and/or modify any Supportive Measures based on all available information. Supportive Measures will remain in effect as necessary.

D. Filing of a Formal Complaint

A Formal Complaint alleging Prohibited Conduct against a Respondent may be filed with the Title IX Officer in person, by mail, or by electronic mail, by using the contact information listed in Section IV of the Policy.

Should the Complainant decide to file a Formal Complaint, the Title IX Officer will review the Formal Complaint and determine whether it should be dismissed or move into the resolution process (see Section III.F of these Procedures).

E. Special Considerations: Requests for Anonymity and to Not Proceed

If a Complainant does not wish to disclose their personally identifiable information (i.e. wishes to remain anonymous) and/or does not wish to file a Formal Complaint, the Complainant may make such a request to the Title IX Officer or designee. Regardless of their choice, the Title IX Officer or designee will still offer Supportive Measures to the Complainant as appropriate. The Complainant retains the ability to file a Formal Complaint at any time.

The Title IX Officer has ultimate discretion over whether the University proceeds, and the Title IX Officer may sign a Formal Complaint to initiate the resolution process when appropriate. The Title IX Officer's decision to sign a Formal Complaint will be based on whether:

1. An investigation is needed to comply with legal anti-discrimination requirements or is otherwise the most appropriate and effective response;
2. The effect that non-participation by the Complainant may have on the availability of evidence and the ability to pursue the resolution process fairly and effectively; and/or
3. A violence risk assessment shows a compelling risk to health and/or safety which requires the University to pursue formal action to protect the University community. A compelling risk to health and/or safety may result from any combination of the following:
 - a. Evidence of patterns of misconduct;
 - b. Predatory conduct, threats, abuse of minors;
 - c. Allegations that the Prohibited Conduct was committed by multiple persons; and/or

- d. Use of weapons and/or violence.

When the Title IX Officer signs the Formal Complaint, the Title IX Officer does not become the Complainant and is not otherwise a Party.

Overall, the University's ability to remedy and respond to the Formal Complaint may be limited if the Complainant does not want the University to proceed with the resolution process. The goal is to provide the Complainant with the opportunity to file a Formal Complaint and participate while balancing the University's obligation to protect its community.

F. Designation of Prohibited Conduct and Dismissal of Formal Complaint

Upon receipt of a Formal Complaint, the Title IX Officer or designee will promptly send a *Written Notice of Designation* simultaneously to both Parties of:

1. Its decision about whether to designate the alleged conduct as Title IX-based Prohibited Conduct, and the reasons for this decision;
2. Its decision to proceed with the resolution process or to dismiss the Formal Complaint as described below⁶; and
3. The Parties' rights to appeal the designation and/or dismissal decision.

Title IX-based Prohibited Conduct

The Title IX Officer or designee ***must*** designate the alleged conduct as Title IX-based Prohibited Conduct if:

1. The alleged conduct would constitute Sexual Harassment within an Education Program or Activity against a person in the United States if substantiated; and
2. The Complainant is participating or attempting to participate in an Education Program or Activity at the time the Complainant files a Formal Complaint, or the Title IX Officer files a Formal Complaint because the alleged conduct meets the above definition.

Mandatory Dismissal

The Title IX Officer or designee ***must*** dismiss a Formal Complaint or any allegations therein if, at any time during the Resolution Processes it is determined that:

1. The conduct alleged in the Formal Complaint, if substantiated, would not constitute Prohibited Conduct; or

⁶ Dismissal under this Policy and Procedures does not preclude a referral to another University process and/or office, as appropriate.

2. The allegations in the Formal Complaint do not fall within the University's jurisdiction.

Permissive Dismissal

The Title IX Officer or designee **may** dismiss a Formal Complaint or any allegations therein if, at any time during the Resolution Processes:

1. A Complainant notifies the Title IX Officer or designee in writing that the Complainant requests to withdraw the Formal Complaint or any allegations therein; or
2. The Respondent is no longer enrolled in or employed by the University; or
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

G. Appeal of Designation and/or Dismissal

Either Party may appeal the *Written Notice of Designation*. The bases for appeal are limited to procedural irregularity, new evidence, and conflict of interest as explained in Section IV.D.5.a of these Procedures. The process for the appeal is set forth in Section IV.D.5.b of these Procedures.

IV. Resolution Processes

A. Consolidation of Complaints

At the discretion of the Title IX Officer or designee, multiple reports may be consolidated into one Informal Resolution and/or investigation if the information related to each incident is relevant in reaching a resolution. Matters may be consolidated where the matters involve multiple Complainants, multiple Respondents, or related facts and circumstances involving the same Parties, including those arising out of the same or different events(s).

B. Informal Resolution Process

Informal Resolution may serve to address the alleged Prohibited Conduct as an alternative to proceeding to an investigation and Hearing. Informal Resolution can encompass a variety of approaches agreed to by the Parties including, but not limited to, mediation, Respondent acknowledgement of responsibility, and/or negotiated interventions and Remedies facilitated by the Title IX Officer or designee.

The purpose of Informal Resolution is to take appropriate action by imposing individual and community interventions and remedies designed to maximize the equal access to the Education Program or Activity, as well as to address the effects of the conduct on the larger University community.

1. Request for Informal Resolution

Either Party may request Informal Resolution, including their preferred approach of reaching a resolution, such as mediation, Respondent acknowledgement of responsibility, and/or negotiated interventions and Remedies. Both Parties and the Title IX Officer or designee must agree to the process in writing. Either Party may terminate an ongoing Informal Resolution at any time prior to reaching an agreement.

The Title IX Officer or designee has the discretion to determine whether a Formal Complaint is appropriate for Informal Resolution and which resolution approach is best utilized given the specifics of the Formal Complaint. The Title IX Officer or designee retains discretion to terminate an ongoing Informal Resolution process at any time, at which point the Title IX Officer or designee will determine appropriate next steps. The Title IX Officer or designee will inform both Parties simultaneously in writing of the reason(s) for terminating an Informal Resolution process.

2. Informal Resolution Not Permitted

Although the Title IX Officer or designee retains discretion to determine whether a Formal Complaint is appropriate for Informal Resolution in other cases, Informal Resolution is not permitted under the following circumstances:

- a. Formal Complaints by a student alleging Sexual Harassment against an employee (staff or faculty); or
- b. Formal Complaints alleging Sexual Assault or Sexual Coercion.

3. Informal Resolution Permitted

When Informal Resolution is utilized, the process is voluntary and is not a requirement or condition of continued enrollment or employment at the University.

In such case, Parties will receive a written *Notice of Informal Resolution* containing the following:

- a. Summary of the allegations;
- b. Notice that neither Party is required to accept responsibility for the alleged Prohibited Conduct, unless a Respondent chooses to do so;
- c. Notice that there is no finding of a Policy violation or Sanction unless agreed to by the Respondent;
- d. Notice that agreement to Informal Resolution is not a waiver of right to proceed with an investigation and Hearing;
- e. Notice that until an Informal Resolution agreement is finalized, the Parties may, at any time, opt out of Informal Resolution, at which point the Formal Complaint would proceed or resume to investigation and Hearing, as appropriate;
- f. Notice of any potential consequences resulting from participating in the Informal Resolution process, including that records will be maintained or could be shared;

- g. Notice about the reasonable confidentiality restrictions of the Informal Resolution process;
- h. Notice that if an Informal Resolution agreement is finalized and implemented, it precludes the Parties from resuming investigation and adjudication of a Formal Complaint arising from the same allegations; and
- i. Notice that the results of Informal Resolution are not eligible for appeal.

4. Mediation and Other Informal Resolution

Informal Resolution, including mediation, must be conducted by a trained facilitator who guides the Parties in a confidential dialogue to reach an effective resolution, if possible. The trained facilitator may be internal or external to the University depending on the needs of the specific case as determined by the Title IX Officer or designee. Sanctions are not possible as a result of Informal Resolution unless the Parties agree to accept Sanctions and/or appropriate Remedies.

5. Negotiated Informal Resolution Interventions and Remedies

If agreed to by the Parties and determined appropriate by the Title IX Officer or designee, the following Informal Resolution interventions and Remedies may be utilized, including but not limited to:

- a. Increased monitoring, supervision, and/or security at locations or activities where the Prohibited Conduct occurred or is likely to reoccur;
- b. Targeted or broad-based educational programming or training for relevant individuals or groups;
- c. Academic and/or housing modifications for either Party;
- d. Workplace modifications for either Party;
- e. 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;
- f. Compliance with a No Contact Order;
- g. Compliance with a Denial of Access;
- h. Completion of community service hours over a specific period of time; and
- i. Separation from the University.

The Title IX Officer or designee will work with the Offices of Student Conduct, Human Resources, and/or Provost/Faculty Affairs as needed to facilitate such negotiated interventions and Remedies.

6. Completion of Informal Resolution

When an Informal Resolution agreement is reached and the terms of the agreement are implemented, the matter is resolved and closed. Appeals by either Party are not permitted. The Title IX Officer or designee is responsible for ensuring compliance with the agreement.

In cases where an agreement is not reached and the Title IX Officer or designee determines that further action is necessary, or if either Party fails to comply with the terms of the Informal Resolution, the matter may be referred for an investigation and adjudication under these Procedures, as appropriate.

The Parties will be provided with a written copy of the terms of the Informal Resolution agreement. The Title IX Officer or designee will maintain all records regarding Informal Resolution.

7. Respondent Acceptance of Responsibility

The Respondent may accept responsibility for all or part of the alleged Policy violation(s) at any point during the resolution process. If the Respondent wishes to accept responsibility, the Title IX Officer may initiate the Informal Resolution process if permitted, after obtaining both Parties' voluntary, written consent, and after providing the required *Notice of Informal Resolution* if it has not already been provided.

Any remaining allegations that are not resolved through the Informal Resolution process may proceed to investigation or Hearing, as appropriate.

C. Investigation Process

When investigating a Formal Complaint, the below procedures will be utilized. However, at any time prior to reaching a determination regarding responsibility, an Informal Resolution may occur if appropriate conditions are satisfied (see Section IV.B of these Procedures).

1. Presumption of Not Responsible

Respondents are presumed not responsible for any and all allegations until the conclusion of the investigation and adjudication process. The University provides the Parties with the written determination following any appeal if an appeal is filed, or if an appeal is not filed, on the date on which an appeal would no longer be considered timely.

2. Notice of Rights and Responsibilities

The Complainant and Respondent are required to review and sign their *Notice of Rights and Responsibilities*. The Investigator will verify that the Parties have received, reviewed, and signed their *Notice of Rights and Responsibilities* and have been provided with a copy of the Policy and Procedures to ensure the Parties have adequate information about the investigation and adjudication. The Investigator will also ensure that both Parties have had an opportunity to ask and receive answers to any questions. For staff, faculty, and third parties, the notice will be provided by the

Title IX Officer or designee. For students, the notice will be provided by the Office of Student Conduct (OSC).

The *Notice of Rights and Responsibilities* will include but are not limited to the following:

- a. Right to be treated with dignity and respect by all University officials;
- b. Right for information to only be shared with others on a need-to-know basis in order to facilitate a resolution;
- c. Right to be informed of available Supportive Measures;
- d. Right to be informed of available community and campus resources and services;
- e. Right to a Support Person and/or an Advisor;
- f. Right to regular updates on the status of the investigation and/or resolution; and
- g. Prohibition against Retaliation and guidance about reporting any retaliatory conduct.

3. Notice of Investigation

After a Formal Complaint is filed, the Parties will be provided a written *Notice of Investigation*, which will include the following:

- a. The University's complete Policy and Procedures as set forth herein;
- b. The allegations of Prohibited Conduct as defined by the Policy;
- c. Identities of the Parties involved, if known;
- d. Date(s), location(s), and time(s) of the alleged incident(s), if known;
- e. Statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the adjudication process;
- f. Parties may have an Advisor of their choice, who may be an attorney and who may inspect and review evidence;
- g. If Parties do not select an Advisor of their choice, the University will provide a trained Advisor for purposes of performing cross-examination on behalf of that Party at the Hearing;
- h. Parties may have a Support Person of their choice;
- i. Advisement that knowingly making false statements or knowingly submitting false information during the investigation and adjudication process is prohibited under Section XII of the Policy;
- j. If the University decides to investigate additional allegations about either Party that are not in the original notice, the Parties will receive an amended notice containing the additional allegations; and
- k. The range of potential Sanctions associated with the alleged Prohibited Conduct.

4. Role of the Investigator

The Title IX Officer or designee will designate an Investigator(s) from OCRSM and/or an external Investigator to conduct a prompt, thorough, fair, and impartial investigation.

5. Overview of the Investigation

a. Standard of Proof

The standard of proof for a determination of responsibility under this Policy is Preponderance of the Evidence. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility remain with the University and not on the Parties.

b. Evidence

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 Formal Complaint. During the investigation, the Investigator will speak separately with both Parties and any other individuals who may have relevant information. No audio or video recording of any kind is permitted during such interviews. The Parties will each have an equal opportunity to present witnesses (including fact and expert witnesses, at their own expense) and any other relevant evidence.

Evidentiary materials, regardless of relevance, may be provided by a Party; however, the Investigator will determine whether and how the evidence and witnesses submitted by the Parties is directly related to the allegations and whether and how that information will be factored into the investigation. 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.

The University does not restrict the ability of Parties to discuss allegations that have been reported or to gather and present evidence. However, the University has a compelling interest in protecting the integrity of the resolution process, protecting the privacy of Parties and witnesses, and protecting Parties and witnesses from harassment, intimidation, or Retaliation during the resolution process. To further these goals, witnesses and Parties are encouraged to limit their sharing of information about a matter (including the allegations, the identities of the Parties and witnesses, and the questions asked in interviews) while the resolution process is ongoing. Parties and witnesses are also cautioned not to discuss the allegations in a manner that constitutes Retaliation or unlawful conduct.

c. 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. However, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to show Consent under the Policy. 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.

The University cannot access, consider, disclose, or otherwise use a Party's record(s) that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the capacity thereof or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party. However, a Party can provide voluntary, written consent to use the above-mentioned material for the investigation and adjudication. Consent shall be specifically limited to the information provided. At no time shall consent be construed as consent to access any other information in the Party's records.

The Investigator will not use, require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

d. Draft Investigation Report

At the conclusion of the investigation, the Investigator will provide a written investigation report (the *Draft Investigation Report*) that provides a case timeline, appropriately summarizes the information gathered (including, but not limited to, the names of witnesses and summaries of their statements), and evidence that is directly related to the Formal Complaint.

e. Notice of Opportunity to Review the Draft Investigation Report

Before the investigation report is complete, the Parties will be given an equal opportunity to review and meaningfully respond to the *Draft Investigation Report*. The Investigator will also send to the Party, and the Party's Advisor if applicable, all evidence obtained that is directly related to the Formal Complaint, including evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence, whether obtained from a Party or other source, for inspection and review. Parties will have ten (10) Days to review the *Draft Investigation Report* and submit a written response, including comments, information, and/or 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 Parties' written responses, the Investigator will continue the investigation, as needed. The Investigator will consider the Parties' written responses prior to completing the *Final Investigation Report*.

f. Final Investigation Report

Upon timely receipt of the Parties' written responses, or after the ten (10) Day review period has lapsed with no written responses, the investigation ends. The Investigator will complete the *Final Investigation Report*. The *Final Investigation Report* will contain summaries of all relevant information obtained throughout the course of the investigation and analysis of fact.

The *Final Investigation Report* will be submitted to the Hearing Officer.

D. Adjudication Process

1. Review of Final Investigative Report

- a. Following completion of the *Final Investigation Report*, the Title IX Officer or designee will meet separately with each Party.
- b. At the meeting, the Title IX Officer or designee will provide each Party with a confidential copy of the *Final Investigation Report*, including all attachments, and explain the next steps in the process.
- c. Each Party will be allowed ten (10) Days to submit a written response to the *Final Investigation Report*, which will be considered by the Hearing Officer. Exceptions may be made during times when the University is not in session or in other circumstances. All written responses will be shared with the other Party prior to the Hearing.
- d. In order to protect the privacy of all individuals involved, all materials shared with the Parties are considered confidential and should not be publicly disclosed or released.

2. Hearing Procedures

- a. A Hearing date will be provided to the Parties at least five (5) Days in advance of the Hearing. Hearing dates are scheduled in consultation with the Parties whenever possible.
- b. If a Party does not have an Advisor present at the Hearing, the University will provide one free of charge for the purpose of conducting cross-examination on behalf of that Party. When able, Parties must notify the Title IX Officer or

designee at least 48 hours prior to the hearing if an Advisor is needed from the University.

- c. The University will notify all witnesses interviewed during the investigation of the date and time of the Hearing. The Hearing Officer may also request the presence of witnesses.
- d. The Hearing Officer may conduct the Hearing with all Parties and witnesses physically present in the same geographic location or, with any or all Parties, witnesses, and other participants present at the Hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- e. At either Party's request, the University will provide the Parties with separate rooms (including separate virtual rooms if the Hearing is held virtually) and use technology enabling the Hearing Officer and Parties to simultaneously see and hear the Party or the witness who is answering a question.
- f. All Hearings are closed to the public.
- g. Hearings will be recorded by the University. No other recordings are permitted. Recordings are maintained by the University. Parties may submit a written request to inspect and review the recording.
- h. All evidence subject to the Parties' inspection and review as explained in Section IV.C.5.e of these Procedures will be available at the Hearing to give each Party equal opportunity to refer to such evidence during the Hearing, including for purposes of cross-examination.
- i. The Investigator will summarize the *Final Investigation Report* and clarify any information in the *Final Investigation Report*.
- j. Each Party may provide a brief opening statement.
- k. Each Party's Advisor will be provided an opportunity to cross-examine the other Party and any witnesses. Questioning will be conducted directly, orally and in real time by the Party's Advisor only. Parties may not question each other or witnesses directly.
- l. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. All relevant questions and follow-up questions, including those challenging the credibility of Parties and witnesses, will be allowed.
- m. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence:

- i. Are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
 - ii. Concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.
- n. Questions and evidence about the Respondent's prior sexual history with an individual other than a Party to the proceedings may only be considered if the evidence:
 - i. Proves prior sexual misconduct;
 - ii. Supports a claim that a Party has an ulterior motive; or
 - iii. Impeaches a Party's credibility after that Party has put their own prior sexual conduct in issue.
- o. The Hearing Officer may not consider a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the University obtains that Party's voluntary, written consent.
- p. The Hearing Officer may not consider any questions or evidence about a student's history of mental health counseling, treatment, or diagnosis, unless the student consents.
- q. The Hearing Officer may not consider questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- r. If a Party or witness declines to answer any questions, the Hearing Officer will not rely on any prior statements made by that Party during the investigation process in making a determination regarding responsibility.
- s. If a Party or witness refuses to submit to cross-examination, then the Hearing Officer is required to ignore that Party or witness's statement and reach a decision based on the remaining body of relevant evidence. The Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the Hearing or refusal to answer cross-examination or other questions.
- t. Each Party will have the opportunity to make a brief closing statement.

3. Written Notice of Determination

The Hearing Officer will provide the Parties with a *Written Notice of Determination* at the same time. The *Written Notice of Determination* will include:

- a. Identification of the allegations at issue;

- b. A description of the procedural steps taken throughout the case;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding application of the Policy to the facts;
- e. A statement of, and rationale for, the determination for each allegation;
- f. A statement of, and rationale for, any Sanctions imposed on the Respondent, and whether any Remedies will be provided to the Complainant, as set forth in more detail below; and
- g. A description of the procedures and permissible grounds for appeal.

4. Disciplinary Sanctions, Remedies, and Other Responsive Actions

The University may take responsive action based on a determination of responsibility for a violation of the Policy. Responsive action is intended to eliminate Prohibited Conduct, prevent its recurrence and promote accountability while supporting the University's educational mission and legal obligations. Responsive action may include Sanctions, Remedies, or other responsive action including rehabilitation, educational, restorative, or monitoring components.

a. Prior to issuing the Written Notice of Determination, the following will occur:

- Parties will have the option to provide written impact statements to the Hearing Officer within three (3) Days of completion of the Hearing.
- The Hearing Officer shall confer with the Title IX Officer or designee, and other University administrators as appropriate, prior to issuing the written determination. Other University administrators may include UHR/Staff Relations and department/unit heads and supervisors for staff, and the Provost's Office/Faculty Affairs and department/unit heads and supervisors for faculty.
- Although the Hearing Officer may confer with University officials as described above, the Hearing Officer is the decision maker responsible for issuing the *Written Notice of Determination*.
- The Title IX Officer or designee and other University administrators will provide input with respect to any recommended Sanction and other responsive action to the Hearing Officer.
- The University will not publicly disclose personally identifiable information about the Parties or the written determination (including any Sanctions) except as required by law.

b. The range of Sanctions and other responsive actions that may be imposed upon the Respondent include but are not limited to the following:

For students:

- Expulsion: Permanent separation of the student from the University. A permanent notation will appear on the student's transcript. The student will also be barred from University premises (grounds and buildings). Pursuant to

delegated authority, the Vice President for Student Affairs shall administratively approve expulsions.

- **Suspension:** Separation of the student from the University for a specified period of time. A permanent notation will appear on the student's transcript. The student shall not participate in any University-sponsored activity and may be barred from University premises (grounds and buildings) during the period of suspension. Suspended time will not count against any time limits required by the Graduate School for completion of a degree. Pursuant to delegated authority, the Vice President for Student Affairs shall administratively approve suspensions.
- **Disciplinary Probation:** The student is prohibited from representing the University in any extracurricular activity or from running for or holding office in any student or University organization. Additional restrictions or conditions may also be imposed.
- **Disciplinary Reprimand:** Warning to the student that further misconduct may result in a more severe disciplinary action.
- **Educational Sanctions:** In addition to Sanctions specified above, educational Sanctions that provide the student with learning, assistive or growth opportunities, research or reflective assignments, community services, values/ethics-based activities or other learning-based sanctions.
- **Housing Sanctions** which may include, but are not limited to: University Housing Termination, Denial of Re-contracting with University Housing, Administrative Room Moves, and Housing Probation. Students who are terminated from Housing or are Denied the ability to Recontract with University Housing are rendered ineligible to lease space in the Courtyards at Maryland and South Campus Commons apartment communities, as well as some University-owned Fraternity and Sorority houses.
- No Contact Order
- Denial of Access to campus grounds and/or buildings

For staff:

- Education and training
- Written reprimand
- No Contact Order
- Denial of Access to campus grounds and/or buildings
- Reassignment
- Suspension without pay
- Separation from employment

For faculty:

- Education and training
- Written reprimand
- No Contact Order
- Denial of Access to campus grounds and/or buildings
- Reassignment

- Suspension without pay
- Separation from employment

For third parties:

- Restrictions on participation in University programs or activities, attendance at University events, or ability to enter campus grounds and/or buildings.

c. The following factors will be considered before imposing Sanctions and other responsive actions on a Respondent:

- The nature and degree of violence involved in the conduct at issue.
- The impact of the conduct on the Complainant.
- The impact of the conduct on the community and/or the University.
- Prior relevant misconduct by the Respondent.
- Maintenance of a safe and respectful environment conducive to working and learning.
- Protection of the University community.
- Any other mitigating, aggravating or compelling circumstances appropriate to reaching a just and appropriate resolution.

d. The range of Remedies that may be provided to a Complainant:

The University may provide reasonable Remedies to a Complainant based on a determination of responsibility for a violation of the Policy. The range of Remedies that may be provided to a Complainant include, but are not limited to:

For students:

- Supportive measures: such as extended classwork deadlines, flexible deadlines, change of venue for taking a test or exam, change in test or exam date and/or retaking of a test or exam;
- Academic accommodations: such as retroactive drop from a particular class, retroactive withdrawal from a semester, policy exemption requests and/or tuition reimbursement;
- Additional accommodations: such as a No Contact Order, Denial of Access, housing accommodation; course schedule changes, counseling and/or referral to outside agencies.

For staff:

- Supportive measures: such as reassignment to a different shift, location, supervisor or work unit.
- Additional accommodations: such as counseling and/or referral to outside agencies.

For faculty:

- Supportive measures: such as reassignment of duties, change in work location, change in service assignments, change in reporting structure.

- Additional accommodations: such as counseling and/or referral to outside agencies.
- e. In the event of a written determination that Respondent violated the Policy and Remedies provided to the Complainant are warranted, the following will occur:**
- Remedies will be provided to the Complainant on a confidential basis.
 - The written determination issued by the Hearing Officer will not include specific Remedies provided to the Complainant but will state whether Remedies designed to restore or preserve equal access to the University's Education Program or Activity will be provided.
 - Remedies are considered confidential and the Respondent will not have access to specific information about what Remedies will be provided except to the extent that the Remedies are punitive and burden the Respondent.
 - Remedies may not be appealed by either Party.
 - The University will not publicly disclose personally identifiable information about the Parties, the written determination, or the Sanctions, except as required by law.

5. Appeals

a. Bases for Appeals

Either Party may initiate this appeal process when the Party receives a *Written Notice of Designation* or a *Written Notice of Determination*. Appeals must be submitted in writing to the Title IX Officer within five (5) days of receipt of the *Written Notice of Designation* or the *Written Notice of Determination*. Appeals are limited to the bases listed below.

i. Procedural Irregularity

- In all cases, the procedural irregularity must be material to the outcome of the designation or the written determination.
- A procedural irregularity affecting the designation or the written determination may include: a failure to follow the University's procedures; a failure to objectively evaluate all relevant evidence, including inculpatory or exculpatory evidence; or a determination regarding what evidence was excluded as irrelevant.

ii. New Evidence

- New Evidence is evidence that was not reasonably available at the time the designation or written determination was made, that could affect the outcome.
- Evidence presented prior to the time the designation or written determination is issued does not qualify as new evidence that was not reasonably available.

iii. Conflict of Interest

- The Title IX Officer or designee, Investigator, or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the designation or written determination.
- Claims of conflict of interest or bias should be based on the current case and process in question and will be assessed accordingly.

iv. Substantially Disproportionate Sanction (Applicable ONLY to *Written Notice of Determination*)

- The Sanction set forth in the written determination is substantially disproportionate to the facts of the particular Policy violation.

Appeals will be reviewed by the designated Appellate Hearing Officer(s) for all appeals of designations or written determinations under these Procedures. The Appellate Hearing Officer(s) will be determined in accordance with the Respondent's status, as explained below. The Appellate Hearing Officer(s) shall be free from conflict of interest or bias and shall not be the same person who reached the determination regarding the designation or the written determination, the Investigator, or the Title IX Officer. All Appellate Hearing Officers will have had no previous involvement with the case that the Appellate Hearing Officer(s) are assigned to review.

- Appeals involving a student Respondent shall be reviewed by a panel of trained Appellate Hearing Officers known as the University Senate Student Conduct Committee.
- Appeals involving a staff or third-party Respondent shall be reviewed by the Vice President for Administration and Finance (VPAF) or designee. The VPAF or designee will appoint staff members available to serve as trained Appellate Hearing Officers. Appeals by staff or third-party Respondents will be assigned to one such Appellate Hearing Officer on a rotating case basis.
- Appeals involving a faculty Respondent shall be reviewed by the Senior Vice President and Provost (SVP/Provost) or designee. The SVP/Provost or designee will appoint faculty members available to serve as trained Appellate Hearing Officers. Appeals by faculty Respondents will be assigned to one such Appellate Hearing Officer on a rotating case basis.

b. Appellate Process

The appellate process following a *Written Notice of Designation* or *Written Notice of Determination* will proceed as follows:

- i. Appeals will be in writing only. There will be no hearing.
- ii. Parties will have five (5) Days from receipt of a *Written Notice of Designation* or *Written Notice of Determination* to submit a written appeal statement challenging the decision.

- iii. Parties will be notified if the other Party files a written appeal statement and given notice in writing of the general grounds for the appeal. The other Party will be given five (5) Days from receipt of the other Party's written appeal statement to submit a written appeal statement in support of the designation or written determination.
- iv. The Title IX Officer or designee shall coordinate the scheduling of the Appellate Hearing Officer(s) and notify the Parties of the date of the appeal deliberation.
- v. The appeal deliberation is closed to the parties.
- vi. The Appellate Hearing Officer(s) will issue a written decision including its rationale which decision shall be shared with both Parties, within five (5) Days of the deliberations.
- vii. The Appellate Hearing Officer(s) may:
 - a) affirm the designation or written determination;
 - b) overturn the designation or written determination; or
 - c) remand the case to remedy procedural errors or to consider new evidence.
- viii. The written decision by the Appellate Hearing Officer(s) is final and is not subject to further appeal.
- ix. After the adjudication process is concluded or when the time for filing an appeal has expired and neither Party has submitted an appeal, the Title IX Officer or designee shall notify the Parties simultaneously of the final outcome of the adjudication process.
- x. The determination regarding responsibility for a violation of the Policy becomes final either on the date that the University provides the Parties with the written decision of the result of the appeal if an appeal is filed, or if an appeal is not filed, on the date after which an appeal would no longer be considered timely, subject to any remanded proceedings.

6. Academic Transcripts and Effect of Withdrawal on Student Respondents

Sanctions of expulsion and suspension are permanently noted on a student Respondent's academic transcript. When a student Respondent requests their transcript prior to the completion of the resolution process, the existence of a pending investigation is also noted. In the event a Respondent chooses to withdraw from the University prior to the resolution of a Formal Complaint, or where the Respondent declines to participate in the University proceedings under the Policy and Procedures, the University will continue the resolution process in accordance with the Procedures. When a Respondent withdraws before the conclusion of the resolution process, the Respondent is ineligible to return to the University until the resolution process has concluded.

7. Post-Resolution Follow-Up

After any Sanction and/or 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 Sanction and/or Remedies that have been imposed. Any violation by a Respondent of the intent and purpose of any Sanction and/or Remedies imposed under the Policy, or a failure by a University employee to provide specified Sanctions or Remedies 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 Policy and Procedures.



Proposal to Establish a Consensual Relationships Policy (Senate Document #18-19-37)

Faculty Affairs Committee | Chair: Daniel P. Lathrop

The Senate Executive Committee (SEC) and Senate Chair Lanford request that the Faculty Affairs Committee review the *Proposal to Establish a Consensual Relationships Policy*.

Specifically, it asks that you:

1. Review the University of Maryland Sexual Misconduct Policy & Procedures ([VI-1.60\[A\]](#)).
2. Review policies regarding consensual relationships and sexual misconduct at Big 10 and other peer institutions.
3. Consult with the proposer.
4. Consult with a representative of the Office of Faculty Affairs.
5. Consult with a representative of University Human Resources.
6. Consult with a representative of the Office of Civil Rights and Sexual Misconduct (OCRSM).
7. Consult with a representative of the Office of General Counsel on the legal implications of consensual relationships between employees and students.
8. Consider whether consensual relationships should be prohibited between employees (i.e. faculty, graduate assistants, staff) and students (i.e. undergraduate, graduate).
9. If the committee determines that relationships between employees and students should be prohibited, it should:
 - a. Consult with a representative of the Office of Civil Rights and Sexual Misconduct (OCRSM) on how best to incorporate such a prohibition in University policy.
 - b. Consider what types of employees and in what situations (i.e. instructional, supervisory) a consensual relationships policy should apply.
 - c. Consider whether the policy should be limited to relationships that involve a power imbalance or a conflict of interest.
 - d. Consider whether the policy should provide a mechanism for requesting/approving exceptions from prohibitions and a process for how relationships with exceptions will be managed once they are approved.
 - e. Consider whether a prohibition on consensual relationships should be addressed in the University's sexual misconduct policy or whether a separate policy should be developed.

- f. Consider how a prohibition on consensual relationships should be implemented.
- 10. If the committee determines that a consensual relationships policy should be developed and it should apply to multiple constituencies, the committee should form a subcommittee with representatives from the relevant Senate constituency-based committees to develop a draft policy for review by each of the three committees before it is finalized by the Faculty Affairs Committee.
- 11. Consult with a representative of the Office of General Counsel on any proposed changes to University policy.
- 12. Provide a preliminary update to the Senate Executive Committee in May 2020.
- 13. If appropriate based on the committee's consideration of the above items, recommend whether the University should establish a consensual relationships policy or whether existing University policy should be revised.

We ask that you submit a report to the Senate Office no later than **November 6, 2020**. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, extension 5-5804.



Proposal to Establish a Consensual Relationships Policy

Table with 4 rows: NAME/TITLE (Steve Rolston, Professor and Chair), EMAIL (rolston@umd.edu), PHONE (X55946), UNIT (Physics), CONSTITUENCY (Faculty)

DESCRIPTION OF ISSUE

A conflict of interest arises when faculty develop amorous/sexual relationships with students in their classes, in campus organizations, or in any situation in which the student might fear reprisals or expect special treatment.

The University's Sexual Misconduct Policy includes a section on Consensual Relationships and Professional Conduct (XIII) as follows:

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

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

DESCRIPTION OF CHANGE YOU WOULD LIKE TO SEE

The University's Sexual Misconduct Policy "discourages" but does not prohibit these types of relationships between faculty and students. There have been cases where these types of relationships have been problematic, so it is important for the University to consider this issue specifically.

SUGGESTION FOR HOW YOUR PROPOSAL WOULD BE PUT INTO PRACTICE

Develop a specific policy to prohibit consensual relationships between faculty and the students that they supervise or instruct, because of the inherent conflict of commitment and power imbalance.

ADDITIONAL INFORMATION

University of Maryland Sexual Misconduct Policy & Procedures VI-1.60(A)

- Sample Policies at other Institutions:
http://theuniversityfaculty.cornell.edu/dean/report-archive/consensual-relationships-policy-committee/final-6-x/
http://policies.cua.edu/eo/sexharass.cfm
http://counsel.cua.edu/fedlaw/nacuanoteamorousrelationships.cfm

<https://policies.utexas.edu/policies/consensual-relationships#responsibilities-procedures>

<https://www.wisconsin.edu/regents/policies/consensual-relationships/>

https://policies.northwestern.edu/docs/Consensual_Relations_011314.pdf

<https://provost.illinois.edu/about/committees/advisory-to-vice-chancellor-for-academic-affairs-and-provost/consensual-relationship-policy-task-force/>