



Review of the Interim Sexual Misconduct Staff Procedures

PRESENTED BY Jane Hirshberg, Chair

REVIEW DATES SEC – November 20, 2019 | SENATE – December 4, 2019

VOTING METHOD In a single vote

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

NECESSARY APPROVALS Senate, President

ISSUE

As a result of changes in state law, the University System of Maryland (USM) revised its Policy on Sexual Misconduct ([VI-1.60](#)) in June 2019. The University of Maryland Sexual Misconduct Policy & Procedures (VI-1.60[A]) were revised to align with the changes to USM policy and were approved on an interim basis on June 24, 2019, pending University Senate review. The policy covers all members of the University community; the procedures provide specific detail on the process for reviewing complaints against faculty, staff, and students, and are applied depending on the constituency of the individual against whom a complaint is made.

In August 2019, the Senate Executive Committee (SEC) charged four Senate committees with consideration of the interim University of Maryland Sexual Misconduct Policy & Procedures. The Equity, Diversity, & Inclusion (EDI) Committee was given responsibility for reviewing the Policy itself to ensure alignment with the revised USM policy and state law ([Senate Document #19-20-03](#)). The Staff Affairs Committee was charged with reviewing the interim Staff Sexual Misconduct Complaint Procedures and ensuring they accurately reflect the changes in state law and USM policy.

RECOMMENDATIONS

The Staff Affairs Committee recommends that the Staff Sexual Misconduct Complaint Procedures be revised as indicated in the document immediately following this report.

The Staff Affairs Committee recommends that the University conduct a comprehensive review of the University of Maryland Sexual Misconduct Policy and Procedures to ensure that they align with best practices.

COMMITTEE WORK

In fall 2019, the Staff Affairs Committee reviewed background materials identified in its charge and considered feedback provided by the Office of Civil Rights & Sexual Misconduct (OCRSM) and the Office of General Counsel (OGC) on the interim Sexual Misconduct Policy and on current practice related to the investigation of sexual misconduct complaints. The committee also carefully reviewed changes to the Sexual Misconduct Policy proposed by the EDI Committee. The Staff Affairs Committee revised the Staff Sexual Misconduct Complaint Procedures to align with the EDI

Committee's revisions and ensure that certain rights established in the Policy were included in the Procedures, as well. The committee also identified some additional concerns with the Policy and Procedures that fell outside the scope of its review, which led to its administrative recommendation.

After due consideration, the Staff Affairs Committee voted to approve the revised Staff Sexual Misconduct Complaint Procedures and an administrative recommendation at its November 13, 2019, meeting. Revisions to the Procedures affecting staff within the bargaining unit must be shared with the union for review following approval by the Senate before being submitted to the President for review and approval.

ALTERNATIVES

The Senate could choose not to approve the recommendation and revisions to the University of Maryland Staff Sexual Misconduct Complaint Procedures, leaving the interim Procedures in effect. However, the Procedures would not align with the Sexual Misconduct Policy and would not adequately describe the rights and responsibilities of participants in misconduct proceedings.

RISKS

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

FINANCIAL IMPLICATIONS

There are no known financial implications.



Review of the Interim Sexual Misconduct Staff Procedures

2019-2020 Committee Members

Jane Hirshberg (Chair)

Max Balagtas-Badoy (Non-Exempt Staff
Contingent II)

Amelia Barabak (Ex-Officio Provost's Rep)

Darrell Claiborne (Ex-Officio NV CUSS Rep)

Jaison Cooper (Exempt Staff Contingent II)

Everett Daviage (Exempt Staff-Division)

Robert DuDonis (Non-Exempt Staff-Division)

Cathy Fisanich (Non-Exempt Staff-Academic)

Sarah Goff (Ex-Officio CUSS Rep)

Elizabeth Hinson (Ex-Officio NV CUSS Rep)

Antonietta Jennings (Non-Exempt Staff-Division)

Rythee Lambert-Jones (Ex-Officio Director of
Human Resources Rep)

Anne Martens (Ex-Officio VP Administration &
Finance Rep)

Kalia Patricio (Ex-Officio CUSS Rep)

Jeanne Pekny (Non-Exempt-Academic)

Brianne Rowh (Exempt Staff-Division)

Margaret Saponaro (Faculty)

Maureen Schrimpe (Ex-Officio CUSS Rep)

Kristin Stenson (Exempt Staff-Academic)

Brooke Supple (Ex-Officio VP Student Affairs Rep)

D. Tella (Student)

Timea Webster (Exempt Staff-Academic)

Date of Submission

November 2019

BACKGROUND

As a result of changes in state law, the University System of Maryland (USM) revised its Policy on Sexual Misconduct ([VI-1.60](#)) in June 2019. The University of Maryland Sexual Misconduct Policy & Procedures (VI-1.60[A]) were revised to align with the changes to USM policy and were approved on an interim basis on June 24, 2019, pending University Senate review. The policy covers all members of the University community; the procedures provide specific detail on the process for reviewing complaints against faculty, staff, and students, and are applied depending on the constituency of the individual against whom a complaint is made.

In August 2019, the Senate Executive Committee (SEC) charged four Senate committees with consideration of the interim University of Maryland Sexual Misconduct Policy & Procedures. The Equity, Diversity, & Inclusion (EDI) Committee was given responsibility for reviewing the policy itself to ensure alignment with the revised USM policy and state law ([Senate Document #19-20-03](#)). The Staff Affairs Committee was charged with reviewing the interim Staff Sexual Misconduct Complaint Procedures and ensuring they accurately reflect the changes in state law and USM policy (Appendix 2).

UNIVERSITY OF MARYLAND SEXUAL MISCONDUCT POLICY & PROCEDURES

The University's Sexual Misconduct Policy & Procedures outline the University's approach to addressing all forms of sexual misconduct involving University faculty, staff, and students, in alignment with federal and state discrimination laws. The Policy defines specific conduct that is prohibited, provides information on resources for victims of sexual misconduct, and outlines broad principles that govern the process for handling reports of sexual misconduct. The Procedures detail the specific processes faculty, staff, and students will go through during a Sexual Misconduct investigation and explain the process from the receipt of a complaint through investigation and adjudication. The Procedures outline possible sanctions or disciplinary action that may come as a

result of a Finding of responsibility, as well as provide a process for appealing a finding and/or sanctions, depending on the case.

In 2018, the Maryland General Assembly passed [Senate Bill 607](#) (Higher Education - Sexual Assault Policy – Disciplinary Proceedings Provisions). The law affected disciplinary proceedings for sexual misconduct cases at state higher education institutions, and required that institutional policies include an enumeration of specific student rights. It also established a framework for current or former students to access counsel paid for by the Maryland Higher Education Commission (MHEC) through a list of attorneys willing and able to represent students in Title IX cases. In spring 2019, the Maryland General Assembly passed [Senate Bill 396](#) (Higher Education – Legal Representation Fund for Title IX Proceedings). The legislation provided funding to MHEC to establish and administer the representation program to provide support in covering reasonable costs and attorney’s fees for current or former students involved in Title IX proceedings.

MHEC is in the process of implementing the attorney program developed by the recent changes in state law. MHEC has developed a website with information on the attorney program as a resource for current and former students. As it moves forward with implementing the program, MHEC will update the website with additional information and will publish a list of attorneys who have agreed that they are willing and able to represent students at low cost or on a pro bono basis. While current and former students will be able to use this list to help them retain an attorney, attorneys on the list will not be obligated to take any individual case.

On June 24, 2019, the University of Maryland Sexual Misconduct Policy was revised to incorporate provisions required by the new state laws from 2018 and 2019, and to align with the recent related changes to the USM Policy. The interim Policy incorporated two additional sections: XI, Student Rights, and XII, Student Rights to an Attorney. These sections outline rights afforded to student parties throughout the process, including the right to an advisor who may be an attorney. The sections also describe the new MHEC program through which current and former students may access counsel paid for by MHEC. The interim Procedures incorporated a statement indicating that parties who are students retain the rights outlined in the Policy throughout the process detailed in the Student, Faculty, and/or Staff Procedures.

COMMITTEE WORK

At its meeting on October 2, 2019, the Staff Affairs Committee reviewed background materials identified in its charge, including the 2018 and 2019 state bills and the USM Policy on Sexual Misconduct. At its October 23 meeting, the committee considered feedback provided by the Office of Civil Rights & Sexual Misconduct (OCRSM) and the Office of General Counsel (OGC) on the interim Policy and on current practice related to the investigation of sexual misconduct complaints. The committee carefully reviewed draft changes to the Policy proposed by the EDI Committee, and identified additional revisions that members felt the EDI Committee should consider. In particular, the committee felt that the new section titled “Student Rights to an Attorney” should be accompanied by more explicit language indicating that staff and faculty may also be advised by an attorney throughout misconduct proceedings. The committee’s suggestions were sent to the EDI Committee for consideration.

At its meeting on November 13, the Staff Affairs Committee reviewed the EDI Committee’s final recommended revisions to the Policy, which addressed the concerns raised by the Staff Affairs Committee. The Staff Affairs Committee revised the Staff Sexual Misconduct Complaint Procedures to align with the EDI Committee’s revisions to the Policy and ensure that certain rights established in the Policy were included in the Procedures, as well. The committee also identified concerns with

the section of the Policy that addresses “Steps to Take Following a Sexual Assault.” Members noted that the guidance does not consistently reflect best practices or a trauma-informed approach, and questioned whether it was even appropriate to include in a policy. Given the committee’s charge was narrowly focused on ensuring the Procedures reflect recent changes in state law and USM policy, the committee agreed to make an administrative recommendation that the Sexual Misconduct Policy & Procedures be reviewed at a future date to ensure further review of this section of the Policy. The committee also identified a list of additional structural and grammatical concerns with the Procedures that should be addressed in any future review, which were shared with the Senate Office.

After due consideration, the Staff Affairs Committee voted to approve the revised Staff Sexual Misconduct Complaint Procedures and an administrative recommendation at its November 13, 2019, meeting.

RECOMMENDATIONS

The Staff Affairs Committee recommends that the Staff Sexual Misconduct Complaint Procedures be revised as indicated in the document immediately following this report.

The Staff Affairs Committee recommends that the University conduct a comprehensive review of the University of Maryland Sexual Misconduct Policy and Procedures to ensure that they align with best practices.

APPENDICES

Appendix 1 — Past Senate Action on University of Maryland Sexual Misconduct Policy & Procedures

Appendix 2 — Charge from the Senate Executive Committee

APPENDIX B: STAFF SEXUAL MISCONDUCT COMPLAINT PROCEDURES

- I. Overview**
- II. Rights to Support Person and Advisor**
 - A. Support Person
 - B. Advisor
 - C. Party Obligations
 - D. Non-Party Participant Requirements
- III. Reporting**
- IV. Complaint Intake Process**
 - A. Notification to the Complainant
 - B. Requests for Confidentiality
 - C. Initial Assessment of Complaint
 - D. Interim Protective Measures
- V. Resolution Processes**
 - A. Time Frame for Resolution
 - B. Alternative Resolution Process
 - C. Investigation Process
- VI. Appeal of Finding**
 - A. Overview
 - B. Grounds for Appeal
 - C. SRC Appellate Body
 - D. Appeal Outcome
- VII. Remedies and Disciplinary Action**
 - A. Impact Statement and Mitigation Statement
 - B. Remedies
 - C. Disciplinary Action
- VIII. Grievance Rights**
- IX. Final Outcome**
- X. Records Retention**
- XI. Post-Resolution Follow-Up**

I. OVERVIEW

These procedures (“Staff Procedures”) set forth in Appendix B accompany the University of Maryland (UMD) Sexual Misconduct Policy (the “Policy”) and are the exclusive procedures that govern the handling of all reports or complaints of Sexual Misconduct against UMD staff. Key terms used herein are defined in the Policy. For example, Sexual Misconduct is an umbrella term defined in the Policy that encompasses Dating Violence, Domestic Violence, Sexual Violence, **Sexual Coercion**, Sexual Harassment, Sexual Assault, Sexual Exploitation, Sexual Intimidation, Relationship Violence, and Stalking.

For purposes of the Policy and these Staff Procedures, staff include University coaches and all University employees other than those with faculty rank as described in II-1.00(A) University of Maryland Policy on Appointment, Promotion, and Tenure of Faculty at <http://president.umd.edu/administration/policies/section-ii-faculty/ii-100a>¹.

Employees with faculty rank are governed by the Faculty Sexual Misconduct Complaint Procedures (*see Appendix C*). These Staff Procedures replace all procedures previously in effect pertaining to the investigation and resolution of Sexual Misconduct complaints against staff at UMD.

Student Rights set forth in Sections XI and XII of the Policy apply throughout the process set forth in these Staff Procedures.

II. RIGHTS TO SUPPORT PERSON AND ADVISOR

Throughout the process, any party may be accompanied to any meeting related to an investigation and resolution of a complaint by up to two (2) other people: (1) a Support Person, and/or (2) an Advisor. Meetings include, but are not limited to, meetings with the Office of Civil Rights & Sexual Misconduct (OCRSM), investigative interviews, document reviews, and Alternative Resolutions.

~~All Student Rights set forth in Sections XI and XII of the Policy apply to parties who are students throughout the process set forth in these Staff Procedures.~~

A. Support Person

A party may choose to be accompanied by a Support Person of their choice, at their own initiation and expense. A Support Person is someone who can provide emotional, logistical, or other kinds of assistance. The Support Person cannot be a witness or provide evidence in the case. The Support Person is a non-participant who is present to assist a Complainant or Respondent by taking notes, providing emotional support and reassurance, organizing documentation, or consulting directly with the party in a way that does not disrupt or cause any

¹ Complaints against law enforcement officers will be investigated and adjudicated consistent with the requirements of the Law Enforcement Officers’ Bill of Rights (LEOBR), Md. Code Ann., Public Safety Article, Title 3, Subtitle 1.

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

B. Advisor

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

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 and former students in retaining an attorney to serve as an Advisor at no or low cost to the student. MHEC will provide 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.

C. Party Obligations

Throughout the process, the Title IX Officer or designee, Investigators, and other University representatives will communicate and correspond directly with the parties, not through a Support Person or Advisor. Parties are responsible for ensuring that Support Persons and Advisors follow the non-party participation requirements below. When a party wishes to have a Support Person and/or Advisor accompany them to a meeting, the party must notify the OCRSM in advance. Parties are also responsible for making sure appropriate authorization exists for the University to communicate the non-party participation requirements below to any Support Person or Advisor.

D. Non-Party Participant Requirements

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

III. REPORTING

Faculty, staff, students, and third-parties may ~~Complaints and other~~ reports of Sexual Misconduct ~~against staff may be made to the OCRSM~~ on their own behalf or on behalf of others. Reports of Sexual Misconduct against staff may be made to the OCRSM. Reports

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

Students may also report Sexual Misconduct against staff to the Office of Student Conduct (OSC), or to the Office of Rights & Responsibilities (R&R) in the Department of Resident Life.

Prompt reporting of Prohibited Conduct is encouraged so that the University can take immediate and corrective action to eliminate the misconduct, prevent its recurrence, and address its effects. The University will provide support and assistance to the Complainant and respond according to the steps outlined in these Staff Procedures. As described in section IV. C, upon receipt of any report, the Title IX Officer or designee will make an immediate assessment of the risk of harm to the parties or to the University community and will take steps necessary to address any risks. These steps may include working with University Human Resources and other campus offices to facilitate Interim Protective Measures (as described in section IV. D) that provide for the safety of the parties and the University community, when appropriate.

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

The University recognizes that deciding whether to report Sexual Misconduct and proceed with a formal complaint under these Staff Procedures is a personal decision that may evolve over time. While prompt reporting is strongly encouraged, there is no time limit for reporting Sexual Misconduct. The OCRSM will coordinate with the appropriate University office to provide support and assistance to each Complainant in making important decisions related to reports of Sexual Misconduct. Consistent with the goal of safety for all University community members, the University will make every effort to respect a Complainant's autonomy in making their own personal decisions after reporting Sexual Misconduct. However, when appropriate, the University, through the OCRSM, retains the right to initiate a formal complaint on its own, independent of any individual's decision as to how they wish to proceed.

IV. COMPLAINT INTAKE PROCESS

A. Notification to the Complainant

Upon receipt of a complaint, the OCRSM will ensure that the Complainant is provided with a copy of the Policy and Staff Procedures and is informed of their rights and responsibilities. The OCRSM will provide information to the Complainant about the University's internal administrative complaint process and review with them their respective rights and responsibilities. The Complainant will be informed of available community and campus resources and services; their right to a Support Person and the Support Person's role; their right

to an Advisor and the Advisor's role; their right to file a report with law enforcement; and the University's prohibition against retaliation. The Complainant will have an opportunity to ask questions and seek additional information.

B. Requests for Confidentiality

Whenever possible, the OCRSM will take action consistent with the Complainant's expressed wishes regarding confidentiality. The University's ability to fully investigate and respond to a complaint may be limited if the Complainant requests that their name not be disclosed to the Respondent or declines to participate in an Investigation. When a Complainant requests their name or other identifiable information not be disclosed and/or that no further action be taken, the Title IX Officer or designee will seek to honor such requests, balancing the Complainant's wishes for confidentiality with the University's obligation to provide a safe and non-discriminatory environment for all members of the University community. The University retains the right to proceed with a complaint as necessary to meet its obligations, and in some cases, may not be able to honor a request for confidentiality.

C. Initial Assessment of Complaint

When the University receives a complaint, the OCRSM will conduct an Initial Assessment. The Initial Assessment will determine whether the reported conduct constitutes a potential violation of the Policy, whether further action is warranted based on the reported conduct, and whether the University has jurisdiction over the parties.

The first step in the Initial Assessment is a preliminary meeting between the Complainant and the OCRSM to gather information that will enable the OCRSM to:

- Assess the nature and circumstances reported in the complaint;
- Assess the safety of the Complainant and of the University community;
- Implement any appropriate Interim Protective Measures;
- Assess for pattern evidence or other similar conduct by the Respondent when relevant to the safety assessment;
- Assess the Complainant's expressed preference regarding resolution, including any request that no further action be taken;
- Assess any request by the Complainant for confidentiality or anonymity; and
- Assess the reported conduct for possible referral to the University of Maryland Police Department (UMPD) for a timely warning under the Clery Act.

During the Initial Assessment, information will be shared with other units/administrators only as necessary and confidentiality will be maintained by the OCRSM and other administrators, to the extent possible.

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

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

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

D. Interim Protective Measures

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

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

V. RESOLUTION PROCESSES

A. Time Frame for Resolution

Consistent with the goal of maximizing educational and working opportunities, remedying the effects of Prohibited Conduct and promoting campus safety while minimizing the possible disruptive nature of the process, the OCRSM will strive to resolve all complaints within sixty (60) business days of receipt. In general, the investigation phase may last approximately four to five weeks and the adjudication phase may last an additional estimated four to five weeks. Good faith efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with the importance of resolving complaints in a timely and expeditious manner. The Title IX Officer may extend the general time frames for the completion of all required actions. If such an extension occurs, the parties will be notified in writing by the OCRSM.

B. Alternative Resolution Process

~~The Title IX Officer or designee has the discretion to determine whether a complaint is appropriate for Alternative Resolution and may propose Alternative Resolution to the~~

~~Complainant as an option.—The Complainant may then seek Alternative Resolution in lieu of an investigation and adjudication.~~

Alternative Resolution is a process whereby remedies and interventions may serve to address the alleged Prohibited Conduct without proceeding to an investigation and adjudication. Alternative Resolution is not appropriate for complaints involving ~~Sexual Violence, including~~ Sexual Assault **or Sexual Coercion**. Neither party is required to accept responsibility for the alleged Prohibited Conduct in order to proceed with Alternative Resolution. **Either party may request an Alternative Resolution Process. At any time, The either** parties may decide not to proceed with Alternative Resolution and may request an investigation and adjudication ~~at any time.—The Title IX Officer retains discretion to terminate an ongoing Alternative Resolution process at any time.~~

The Title IX Officer or designee has the discretion to determine whether a complaint is appropriate for Alternative Resolution and retains discretion to terminate an ongoing Alternative Resolution process at any time~~may propose Alternative Resolution to the Complainant as an option.—The Complainant may then seek Alternative Resolution in lieu of an investigation and adjudication.~~

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

- Targeted or broad-based educational programming or training for relevant individuals or groups;
- Academic and/or housing modifications for Student Complainants;
- Workplace modifications and other administrative changes;
- Completion of projects, programs, or requirements designed to help the Respondent manage behavior, refrain from engaging in Prohibited Conduct, and understand why the Prohibited Conduct is prohibited; and
- Agreements to cease contact and limit access to specific University buildings or areas or forms of contact with particular persons.

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

Where the Complainant, Respondent, and the University have reached an Alternative Resolution agreement, the parties will be provided with a copy of the agreement. Entering into Alternative

Resolution and signing an agreement does not mean that the Respondent admits responsibility; nor does it mean that there has been a finding of a Policy violation.

C. Investigation Process

When the Initial Assessment determines the University has jurisdiction over the Respondent and the alleged conduct, and where Alternative Resolution is not appropriate or Respondent fails to comply with the terms of an Alternative Resolution agreement, an investigation will occur.

1. Notice of Investigation

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

The *Notice of Investigation* will contain the circumstances of the alleged incident (which generally will include, to the extent known, the name of the Complainant and the date, time, and location), the Prohibited Conduct alleged as defined by the Policy, and the range of potential disciplinary action associated with the Prohibited Conduct. Both parties will also be informed that they will have an opportunity to be heard regarding the complaint during the investigation process, including the opportunity to be heard during separate interviews with an Investigator regarding the alleged Sexual Misconduct.

2. Notice of Rights and Responsibilities

Both parties will be provided with a copy of the Policy and Staff Procedures and informed of their rights and responsibilities pursuant to the Policy. This includes but is not limited to: no contact directives (and provided a copy), prohibitions against retaliation and guidance about reporting any retaliatory conduct, **the right to the presence of a Support Person and/or an Advisor**, and available community and campus resources and services.

3. Standard of Review

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

4. Role of the Investigator

The Title IX Officer or designee will designate one or more Investigator(s) from the OCRSM and/or an external Investigator to conduct a prompt, thorough, fair, and impartial investigation. All Investigators will receive annual training on issues related to sexual and gender-based harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking. The training

will also include how to conduct a fair and impartial investigation that provides parties with notice and a meaningful opportunity to be heard, as well as how to protect the safety of Complainants and the University community while promoting accountability.

5. Overview of the Investigation

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

a. Special Considerations

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

At the discretion of the OCRSM, multiple reports may be consolidated in one investigation if the information related to each incident is relevant in reaching a determination. Matters may be consolidated where they involve multiple Complainants, multiple Respondents, or related conduct involving the same parties, provided that it does not delay the prompt investigation and resolution of complaints.

b. Draft Report

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

c. Notice of Opportunity to Review the Draft Investigation Report

Before the investigation report is finalized, the parties will be given an opportunity to review and respond to the draft report. Upon receipt of notice to review the draft report, the parties

will each have five (5) business days to review the report and all underlying documents and submit written 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 comments, information, and/or questions provided during the review period, the Investigator will continue the investigation, as needed.

6. Recommended Finding

Upon timely receipt of any additional information or comments from the parties or after the five (5) business day comment period has lapsed with no comments provided, and the investigation is complete, the Investigator will finalize the investigation report.

The final investigation report will include all relevant information obtained in the course of the investigation, an analysis and proposed findings of material fact, and a recommended finding of whether or not a Policy violation occurred by a preponderance of the evidence.

7. Independent Review of the Finding

The final investigation report and the recommended finding will be automatically reviewed by a Standing Review Committee (SRC). Each SRC is composed of three (3) individuals (faculty, staff, and/or students), with at least one (1) staff member. SRC members shall be members of the University community who have had no previous involvement with the case, and have been trained to review such cases. SRC members are obligated to disclose to the OCRSM any known conflicts prior to participating in any specific SRC review. Conflicts or familiarity with the individuals involved in the matter that are disclosed to the OCRSM will automatically disqualify an individual SRC member from participation in any particular review.

The SRC will review the final investigation report and consider whether the recommended finding is supported by the information obtained in the course of the investigation. The SRC will confine its consideration to a review of the written record. The SRC may speak with the Investigator when clarification about the final investigation report is needed and/or to issue specific instructions to the Investigator for further investigation. The results of any additional requested investigation will be reported to the SRC.

Once any additional investigation is complete, the SRC will issue its determination on the recommended finding. The SRC will make one of two possible decisions:

- Approve the recommended finding; or
- Reject the recommended finding.

The SRC must issue a written decision to the OCRSM within five (5) business days of receipt of the final investigation report and/or receipt of any additional information resulting from additional requests to the Investigator by the SRC.

After the SRC issues its written determination, the OCRSM will issue a *Notice of Finding*, which will include a range of potential disciplinary actions associated with the finding. The *Notice of Finding* will be sent to the parties and University Human Resources, along with the SRC

determination and a copy of the final investigation report, including any additional information resulting from additional investigation.

Either party may submit Impact and Mitigation Statements within three (3) business days of receipt of the *Notice of Finding* in accordance with section VII.A.

After the issuance of the *Notice of Finding*, University Human Resources in conjunction with the Respondent's unit head may initiate disciplinary action against the Respondent as set forth in section VII. C.

Regardless of whether a disciplinary action is initiated, either party may appeal the finding in accordance with section VI below.

The Respondent has a separate right to grieve any discipline imposed in accordance with the grievance rights afforded to them based on their specific employment status. Filing an appeal of the finding with the OCRSM does not initiate a grievance of discipline imposed as a result of a finding.

VI. APPEAL OF FINDING

Either or both parties may appeal the finding. An appeal must be submitted to the OCRSM or designee in writing within five (5) business days of the date of receipt of the *Notice of Finding*. Appeals received after five (5) business days shall be denied. If an appeal is received on time, the other party will be notified and given five (5) business days from the date of receipt of the notice to respond. Responses shall be submitted directly to the OCRSM or designee. Appeals and responses filed by each party will be shared with the other party and considered together in one appeal review process. If neither party submits an appeal, the finding is final after five (5) business days. Appeals will be decided by an SRC Appellate Body (as defined in section VI. C below).

A. Overview

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

B. Grounds for Appeal

Grounds for appeal shall be limited to:

1. Substantial Procedural Error

Specified procedural errors or errors in interpretation of University policy that were so substantial as to effectively deny a Complainant or a Respondent notice or a fair opportunity to

be heard. Mere deviations from procedures that were not so substantial as to deny a Complainant or Respondent notice or a fair opportunity to be heard will not be a basis for sustaining an appeal.

2. New Evidence

New and significant relevant information has become available which a reasonably diligent person could not have discovered during the Investigation.

When the basis of the Appeal is new evidence, the SRC Appellate Body will determine whether the information is new and was unavailable at the time of the investigation. If the SRC Appellate Body determines that the information is not new and was available at the time of the investigation, the Appeal will be denied. If the information is determined to be new and unavailable at the time of the investigation, the SRC Appellate Body will make a determination as to whether the new information could change the outcome of the investigation. If the SRC Appellate Body determines that the new evidence could change the outcome, the case will be sent back to the Investigator for further investigation. After new evidence is considered, the OCRSM will then provide the SRC Appellate Body with a modified report and findings, as appropriate. Copies of the modified report and findings, if any, will also be provided to the parties. The modified report will be considered by the SRC Appellate Body. The SRC Appellate Body will then decide to affirm the recommendations of the modified report, reject them, or ask for additional investigation.

C. SRC Appellate Body

The Standing Review Committee (SRC) Appellate Body is the designated appellate body for all appeals of findings under these Staff Procedures. The SRC Appellate Body is composed of three (3) members (faculty, staff, and/or students), with at least one (1) staff member. SRC Appellate Body members shall be members from the University community who have had no previous involvement with the case, and have been trained to review such cases.

D. Appeal Outcome

The SRC Appellate Body may:

- Affirm the finding;
- Reject the finding; or
- Remand the case back to the Investigator for further investigation.

The SRC Appellate Body Chair will render a written decision on the appeal to the Title IX Officer or designee within five (5) business days from the date of the submission of all appeal documents. The SRC Appellate Body decision is the final determination of a Policy violation and may not be further appealed under these Staff Procedures. If an appeal outcome changes the finding against an employee covered by the Exempt MOU or Nonexempt MOU, University Human Resources will review the appeal outcome and revise discipline imposed or in process, as appropriate.

VII. REMEDIES AND DISCIPLINARY ACTION

A. Impact Statement and Mitigation Statement

Whenever there is a finding of responsibility, the parties may choose to submit statements to University Human Resources, within three (3) business days from the date of receipt of the *Notice of Finding* or SRC Appellate Body decision, if an appeal was filed.

The Complainant may submit a written Impact Statement to University Human Resources describing the impact of the Prohibited Conduct on the Complainant.

The Respondent may submit a written Mitigation Statement to University Human Resources explaining any factors the Respondent believes should mitigate or otherwise be considered in determining appropriate remedies and/or recommended discipline either issued or being considered, if any.

The parties' respective statements will be considered by University Human Resources and not shared with the other party.

B. Remedies

The Title IX Officer or designee, in consultation with University Human Resources or other appropriate administrators, will identify reasonable short-term and/or long-term remedies to address the effects of the conduct on the Complainant and prevent its reoccurrence. Such remedies seek to restore to the Complainant, to the extent possible and within reason, the benefits and opportunities lost as a result of the Prohibited Conduct. The Title IX Officer or designee may also identify remedies, such as training for specific audiences, to address the effects of the conduct on the larger University community. Remedies are separate from disciplinary action and may occur independently of or concurrently with any discipline that is imposed.

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

- **Support measures** such as extended classwork deadline, or flexible deadlines, change of venue for taking an exam, change in exam date, and/or retaking of an exam;
- **Academic accommodations** such as retroactive drop from a particular class, retroactive withdrawal from a semester, policy exemption requests, and/or tuition reimbursement; and
- **Housing accommodations.**

Other remedies for Complainants may include, but are not limited to:

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

C. Disciplinary Action

University Human Resources in conjunction with the Respondent's unit head may initiate disciplinary action, if any, based on a violation of the Policy, after a finding of responsibility and the issuance of the *Notice of Finding* set forth in section V. C. 7 above, or in the event of an appeal, after all appeals under these Staff Procedures, if any, have been exhausted.

Discipline imposed on Respondents covered by the Exempt MOU and Nonexempt MOU will comply with the applicable provisions of the MOU. Discipline imposed on Respondents not covered by an MOU shall be in accordance with applicable University and University System of Maryland (USM) policies.

University Human Resources in conjunction with the Respondent's unit head will determine the appropriate disciplinary action, if any. To determine what type of disciplinary action is most appropriate, the following factors shall be considered:

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

Discipline shall be imposed in accordance with all procedural due process rights afforded staff based on their employment status in accordance with University policy and Maryland law. All staff disciplinary action under these Staff Procedures shall be approved by the Assistant Vice President for Human Resources or designee.

1. Notice of Disciplinary Action

When disciplinary action is to be imposed, upon the approval by the Assistant Vice President for Human Resources or designee, University Human Resources will ensure that a *Notice of Disciplinary Action* is issued to the Respondent.

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

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

VIII. GRIEVANCE RIGHTS

Staff may grieve disciplinary action in accordance with the rights afforded to them based on their specific employment status. Filing an appeal of the finding is not the same as grieving disciplinary action. The review and appeal processes under these Staff Procedures are separate from any grievance rights.

IX. FINAL OUTCOME

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

X. RECORDS RETENTION

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

University Human Resources and the department/unit head will maintain records of all disciplinary action, remedies, and grievances related to a complaint and any Alternative Resolution agreements.

XI. POST-RESOLUTION FOLLOW-UP

After any disciplinary action 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 disciplinary action and/or remedies that have been imposed. Any violation by a Respondent of the intent and purpose of any disciplinary action and/or remedies imposed under the Policy, or a failure by the University to provide a specified disciplinary action and/or remedy should be reported to the OCRSM.

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

Appendix 1: Past Senate Action on University of Maryland Sexual Misconduct Policy and Procedures

Past Senate Action on University of Maryland Sexual Misconduct Policy and Procedures

Senate Document [#11-12-43](#): Review of the University of Maryland Policies and Procedures on Sexual Harassment

- Prior to 2012: UMD had two separate policies on sexual harassment and sexual assault and misconduct
- In June 2012, a Joint President/Senate Sexual Harassment Policies & Procedures Task Force was created and charged with reviewing the University of Maryland Policy and Procedures on Sexual Harassment (VI-1.20[A]) and determining whether and how they could be improved to comport with prevailing best practices. In the course of its review, the Task Force also reviewed the University of Maryland, College Park Procedures on Sexual Assault and Misconduct (VI-1.30[A]).
- In October 2013, the Task Force recommended that one policy be established to address all forms of sexual misconduct, including sexual assault and sexual harassment. The Task Force developed a policy and made substantive changes to the University's approach to addressing misconduct as it developed the Policy. The Policy and all associated recommendations were approved by the Senate and the President.
 - The Task Force also recommended the establishment of a Title IX Office and a permanent position for a Title IX Coordinator and Title IX Investigator; a communication strategy to educate and inform the community about policy, procedures, and resources; and a training and education program to educate the community about sexual misconduct, related policies, and legal and ethical obligations related to reporting sexual misconduct.

Senate Document [#14-15-11](#): Review of the Interim University of Maryland Sexual Misconduct Policy

- The Violence Against Women Act (VAWA) and related guidance from Office of Civil Rights (OCR) in the Department of Education were revised in 2013.
- In June 2014, the University System of Maryland developed a revised System policy on Sexual Misconduct, in close collaboration with the Office of the Attorney General. All USM institutions were asked to revise their policies by the end of 2014. A revised University of Maryland Sexual Misconduct Policy was developed and approved in October 2014 by the President on an interim basis, pending Senate review.
- In fall 2014, the EDI Committee was charged with reviewing the interim Policy.
- In April 2015, the EDI Committee proposed revisions to the Policy. EDI's review resulted in revised definitions of Prohibited Conduct to include Sexual Assault I (non-consensual sexual intercourse) and Sexual Assault II (non-consensual sexual contact). The revised Policy was approved by the Senate and the President.

Senate Documents [#14-15-16](#), [#14-15-26](#), [#14-15-27](#): Review of the Interim Sexual Misconduct Procedures for Students, Staff, and Faculty

- In fall 2014, the OCRSM and the University administration developed interim procedures for resolving complaints of sexual misconduct brought against students, faculty, and staff at the University. The Student Conduct, Faculty Affairs, and Staff Affairs Committees were charged with review of the procedures relevant to their constituencies.
- The committees reviewed the work of the EDI Committee on the Policy throughout their work on the Procedures.
- The process included review of a new set of interim procedures put in place in fall 2015 to take into account new federal guidance and guidance from the Office of the Attorney

General. The new interim procedures incorporated many suggestions that had already been developed by the relevant Senate committees.

- After a thorough review, procedures for all constituencies were approved by the Senate in April 2016.

Senate Document [#15-16-30](#): Revisions to the University of Maryland Sexual Misconduct Policy

- The Office of the Attorney General conducted a review of all sexual misconduct policies and procedures at institutions in the University System of Maryland, and developed guidance for the System and individual institutions based on its review.
- The President approved revisions to the Sexual Misconduct Policy on March 21, 2016 on an interim basis, pending Senate review. The revisions included details related to training, applicability, confidential resources, the definition of a Responsible University Employee, the timeframe for review, and amnesty for students who report sexual misconduct that occurs in connection with prohibited alcohol or drug use.
- The EDI Committee approved of the changes that had been made in the interim Policy. It developed minor revisions, including a number of technical revisions.
- In April 2016, the EDI Committee proposed revisions to the Policy. The revised Policy was approved by the Senate and the President.



**Review of the Interim Sexual Misconduct Staff Procedures
(Senate Document #19-20-06)
Staff Affairs Committee | Chair: Jane Hirshberg**

Senate Bill 396 - Higher Education - Legal Representation Fund for Title IX Proceedings provides state funding to the Maryland Higher Education Commission (MHEC) to establish and administer a fund that provides support for reasonable costs and attorney's fees for students for Title IX proceedings. As a result of the new law, the University System of Maryland (USM) revised its Policy on Sexual Misconduct (VI-1.60) and asked all USM institutions to align their policies accordingly. President Loh approved interim changes to the University of Maryland Sexual Misconduct Policy & Procedures on June 24, 2019, pending University Senate review.

Senate Chair Lanford and the Senate Executive Committee have requested that the Equity, Diversity, and Inclusion (EDI) Committee review the interim Sexual Misconduct Policy. The associated procedures will be reviewed separately by the Senate's Faculty Affairs, Staff Affairs, and Student Conduct Committees, respectively.

The Staff Affairs Committee should:

1. Review the interim University of Maryland Sexual Misconduct Policy & Procedures ([VI-1.60\[A\]](#)).
2. Review the University System of Maryland (USM) Policy on Sexual Misconduct ([VI-1.60](#)).
3. Review [Senate Bill 396](#) - Higher Education - Legal Representation Fund for Title IX Proceedings.
4. Review [Senate Bill 607](#) (SB607) - Higher Education – Sexual Assault Policy – Disciplinary Proceedings Provisions.
5. Consult with a representative of the Office of Civil Rights & Sexual Misconduct (OCRSM).
6. Consider whether the information provided in the interim staff procedures appropriately reflects the principles within SB396, SB607, and the USM Policy on Sexual Misconduct.
7. Consult with the Senate Faculty Affairs Committee regarding any potential revisions to the faculty procedures.
8. Consult with a representative of the Office of General Counsel on any proposed changes to the staff procedures.
9. If appropriate, recommend whether the interim staff procedures should be revised.

We ask that you submit a report to the Senate Office no later than **November 12, 2019**. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, extension 5-5804.