



## Interim University of Maryland Policy on Sexual Harassment and Other Sexual Misconduct

**PRESENTED BY** Raymond Nardella, 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 & Procedures on Sexual Harassment and Other Sexual Misconduct

**NECESSARY APPROVALS** Senate, President

### ISSUE

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On May 6, 2020, the United States Department of Education (DOE) released new Title IX regulations, which became effective on August 14, 2020. The University System of Maryland (USM) revised its Policy on Sexual Harassment (VI-1.60) to align with the new regulations on July 22, 2020. The Office of Civil Rights and Sexual Misconduct (OCRSM), with a working group of campus stakeholders (Title IX Working Group), revised the University's policy and procedures to comply with the regulations by the effective date. On August 14, 2020, President Pines approved an interim University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct ([VI-1.60\[A\]](#)), pending Senate review.

On August 19, 2020, the Senate Executive Committee (SEC) charged four Senate committees with reviewing the interim policy and procedures. The Equity, Diversity, and Inclusion (EDI) Committee was charged with reviewing the policy component to ensure that the University policy complies with the revised USM policy, federal regulations, and state law, and aligns with University principles and values (Senate Document #20-21-03). The Staff Affairs Committee, Student Conduct Committee, and Faculty Affairs Committee were jointly charged with reviewing the interim Procedures (Senate Document #20-21-08).

### RECOMMENDATION

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The Equity, Diversity, and Inclusion Committee recommends that Interim University of Maryland Policy on Sexual Harassment and Other Sexual Misconduct (VI-1.60[A]) should be revised as shown immediately following this report.

### COMMITTEE WORK

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The EDI Committee began reviewing the charge during the fall 2020 semester. The committee reviewed the charge elements, the current interim University policy and the proposed revisions from the Title IX Working Group, and the University System of Maryland (USM) Policy on Sexual Harassment (VI-1.60). The committee also reviewed background information on the Title IX regulations provided by the DOE and several value and mission statements of the University. The

committee consulted with its ex-officio representative from the OCRSM, who serves as the University's Title IX Officer, and a representative from the Office of General Counsel to learn more about the development of the interim Policy and the legal framework associated with its development. The committee also considered feedback on the interim Policy and its impact on the campus community from key stakeholders represented by University Human Resources (UHR), the Office of Faculty Affairs (OFA), the Office of Student Conduct (OSC), and several stakeholder groups including CARE to Stop Violence (CARE), the Sexual Assault Prevention Committee (SAPC), the Graduate Student Government (GSG), Preventing Sexual Assault (PSA), and the Student Government Association (SGA) Sexual Misconduct Prevention Committee (SMP).

During its review, a major focus of the committee was considering the accessibility and understanding of the Policy for all campus community members. The committee determined that the Policy generally aligns with the mission and values of the University. This determination was based on the Policy including provisions that are beyond the scope of the federal regulations and provide enhanced protections and considerations for campus constituents. These provisions include:

- Expanding conduct that is within the scope of the Policy to include acts committed in the context of a University Education Program or Activity outside of the United States, such as study abroad programs.
- Maintaining the standard of proof for a determination of responsibility under the Policy as Preponderance of Evidence even though the regulations permit institutions to opt to use a more rigorous "clear and convincing evidence" standard.
- Not limiting Prohibited Conduct covered by the Policy to Title IX defined offenses. Under "Other Sexual Misconduct" additional offenses are included, such as Sexual Coercion, Sexual Exploitation, and Sexual Intimidation. Additionally, the standard for determining whether unwelcome sexual behavior is Prohibited Conduct as defined under Other Sexual Misconduct is based on whether a reasonable person would find it sufficiently severe or pervasive. This allows matters that do not fall under Title IX to be within the scope of the University's Policy and to be investigated and adjudicated under the same Procedures that are used for claims based on Title IX.

After the August 14, 2020 effective date, the DOE issued additional informal guidance on the interpretation and implementation of the revised regulations. Based on that guidance, in January 2021, the University's Title IX Working Group proposed additional revisions to the interim Policy and Procedures. The suggested changes to the Policy ranged from technical revisions that updated and clarified terminology, to substantive changes such as adding a provision against conflict of interest or bias against either Party by an individual in certain designated roles in Title IX investigation and adjudication processes. One of the substantive revisions resolved concerns raised by the committee and shared in feedback from campus organizations related to the offenses listed under Sexual Assault. The Working Group added the offense of Non-Consensual Sexual Penetration and removed gender-specific references to genitalia. This offense replaced rape, sodomy, and sexual assault with an object. The Working Group also revised the Emergency Removal provision by eliminating administrative leave as an option for staff and faculty Respondents because there is not a consistent means of imposing administrative leave on members of these constituent groups.

A significant and consistent concern discussed by the committee and shared in the feedback that it received is that the formality and legal nature of the Policy language required by the federal regulations are intimidating and have the potential to deter community members from reporting alleged incidents of Prohibited Conduct. The committee recommended adding an Introduction to the Policy and revising the Purpose provision to reinforce that one of the intentions of the Policy is to protect access to education in addition to maintaining a safe and secure environment. The

committee also recommended revisions to the Reporting and Rights of Parties sections to further demonstrate that the University's first priority of responding to a report is to address the safety and well-being of the affected individuals. Related to Reporting, the committee recommended including graduate assistants among the list of Responsible University Employees (RUE) who are not confidential resources and who have an obligation to report to OCRSM when they become aware of incidents that may violate the Policy.

The committee considered all of the feedback and consultation discussions during its review of the interim Policy and the charge elements. After due consideration, the Equity, Diversity, and Inclusion Committee approved the proposed revisions to the interim Policy on Sexual Harassment and Other Sexual Misconduct in an email vote concluding on April 26, 2021.

## **ALTERNATIVES**

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The Senate could choose not to accept the recommendation. However, the University would lose the opportunity to further align the Policy with the University's mission and vision and with the values of campus community members.

## **RISKS**

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There are no associated risks to the University in adopting the recommendation.

## **FINANCIAL IMPLICATIONS**

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There are no known financial implications in adopting the recommendation.



## **Review of the Interim University of Maryland Policy on Sexual Harassment and Other Sexual Misconduct**

### **2020-2021 Committee**

**Raymond Nardella** (Chair)  
**Linda Andemicael** (Undergraduate Student)  
**Nicole Cousin-Gossett** (Faculty)  
**Jennifer Dixon Cravens** (Faculty)  
**Brandon Dula** (Ex Officio VP Student Affairs Rep)  
**Typhanye Dyer** (Faculty)  
**Jordan Ealey** (Graduate Student)  
**Temitope Fajingbesi** (Faculty)  
**Donna Hammer** (Exempt Staff)  
**Grace Karmiol** (Ex-Officio Office of Civil Rights & Sexual Misconduct Director and Title IX Officer)  
**Leslie Krafft** (Exempt Staff)

**Anne Martens** (Ex-Officio VP Administration & Financial Rep)  
**Brian Medina** (Ex-Officio VP Diversity & Inclusion Rep)  
**Laura Rosenthal** (Ex-Officio Provost's Rep)  
**Ron Padron** (Exempt Staff)  
**John Salerno** (Graduate Student)  
**Curtis Valentine** (Faculty)  
**Laurie Walborn** (Non-Exempt Staff)  
**Dana Wimbish** (Non-Exempt Staff)

### **Date of Submission**

**April 2021**

## **BACKGROUND**

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On May 6, 2020, the United States Department of Education (DOE) released new Title IX regulations, which became effective on August 14, 2020. The University System of Maryland (USM) revised its Policy on Sexual Harassment (VI-1.60) to align with the new regulations on July 22, 2020. The Office of Civil Rights and Sexual Misconduct (OCRSM) convened a working group of campus stakeholders in summer 2020 to review the regulations and revise the University's policy and processes in order to ensure compliance with the regulations by the time they went into effect. On August 14, 2020, President Pines approved an interim University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct ([VI-1.60\[A\]](#)), pending Senate review.

On August 19, 2020, the Senate Executive Committee (SEC) charged four Senate committees with reviewing the interim policy and procedures. The Equity, Diversity, & Inclusion (EDI) Committee was charged with reviewing the policy component to ensure that the University policy complies with the revised USM policy, federal regulations, and state law and aligns with University principles and values (Senate Document #20-21-03) (Appendix 3). The Staff Affairs Committee, Student Conduct Committee, and Faculty Affairs Committee were jointly charged with reviewing the interim Procedures (Senate Document #20-21-08).

## **DEPARTMENT OF EDUCATION TITLE IX REGULATIONS**

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On May 6, 2020, the DOE released the final Title IX regulations regarding sexual harassment under Title IX of the Education Amendments of 1972. The final regulations changed the scope of covered conduct under Title IX and expanded the requirements for investigation and adjudication process for Title IX grievances. The key substantive changes include:

- **Jurisdiction and Scope:** The regulations clarified that Title IX applies to education programs or activities that extend beyond on-campus to include locations and events where the institution exercises “substantial control,” but Title IX does not apply to conduct that occurs outside the boundaries of the United States. An institution is permitted the option of implementing policy that would reach these programs and activities. The Title IX grievance process is not available to former students or employees.
- **Definition of Sexual Harassment:** Sexual harassment based on a hostile environment is defined as “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 recipient’s educational program or activity.” The prior standard for hostile environment was if the conduct was determined by a reasonable person to be either severe, pervasive, or objectively offensive.
- **Emergency Removal Standard:** The regulations enhanced the standards for implementing the emergency removal of a Respondent. The emergency removal of a Respondent must be based on an assessment that includes an individualized safety and risk analysis and a determination that an immediate threat to the physical health and safety of an individual exists based on the alleged prohibited conduct. The Respondent must also be provided with notice and an opportunity to challenge the removal decision.
- **Access to Informal Resolution:** A formal complaint must be filed before the parties may consent to using an informal resolution process.
- **Investigations and Hearings:** Investigation and hearing procedures against students and employees are required to be the same. Hearings must be live and each party’s Advisor or Attorney may ask the other party and witnesses questions deemed relevant by the Hearing Officer, which effectively subjects the parties and witnesses to cross-examination.
- **Records Retention and Training:** Specific records retention requirements for institutions and training obligations for Title IX Coordinators, investigators, Hearing Officers, Appellate Hearing Officers, and Informal Resolution facilitators were included in the regulations

The regulations also include a number of procedural due process requirements during the investigation and adjudication process to provide the parties with equal access to written allegations of the alleged offense and to the evidence gathered in the investigation an institution’s obligation to notice, ensuring equitable treatment of all parties. A summary of major provisions of the Title IX regulations is available in Appendix 1.

## **CHANGES WITHIN THE INTERIM POLICY**

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The University of Maryland (the University) Policy and Procedures on Sexual Harassment and Other Sexual Misconduct (VI-1.60[A]) outlines the University’s approach to addressing all forms of sexual misconduct involving University faculty, staff, students, and third parties. The Policy defines specific conduct that is prohibited, provides information on resources and support for individuals who report being subjected to sexual misconduct, and outlines broad principles that govern the process for handling reports of sexual misconduct. The Procedures detail the process from receipt of a report alleging a violation of the Policy through investigation and adjudication, discuss the range of sanctions or disciplinary action that may be imposed upon a finding of responsibility and the remedies that may be available to a complainant, and advise of the bases and process for appealing a finding of responsibility and/or sanctions, depending on the case.

In 2020, the OCRSM and the Title IX Working Group, which consisted of University stakeholders from across campus, developed revisions to the University's Policy and Procedures to align with new federal regulations and to continue the University's commitment to creating and maintaining a learning and work environment that protects the well-being of the campus community. The interim University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct ([VI-1.60\(A\)](#)) was approved on August 14, 2020, pending Senate review.

The 2020 interim Policy incorporates the substantive changes that are required by the federal regulations as noted above. The University Policy also goes beyond the federal regulations where appropriate to maintain the University's commitment to addressing other forms of sexual misconduct beyond those categorized by Title IX, and to uphold the University's principles and values. Under the University Policy:

- Prohibited Conduct also includes acts committed in the context of a University Education Program or Activity outside of the United States, such as study abroad programs.
- The standard of proof for a determination of responsibility under the Policy continues to be Preponderance of Evidence even though the regulations permit institutions to opt to use a more rigorous "clear and convincing evidence" standard.
- Prohibited Conduct is not limited to Title IX defined offenses. Under "Other Sexual Misconduct" additional offenses are included, such as Sexual Coercion, Sexual Exploitation, and Sexual Intimidation. Additionally, the standard for determining whether unwelcome sexual behavior is Prohibited Conduct as defined under Other Sexual Misconduct is based on whether a reasonable person would find it sufficiently severe *or* pervasive. This allows matters that do not fall under Title IX to be within the scope of the University's Policy and to be investigated and adjudicated under the same Procedures that are used for claims based on Title IX.

## COMMITTEE WORK

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The EDI Committee began reviewing the charge during the fall 2020 semester. The committee reviewed the charge elements, the current University policy and the proposed revisions from the Title IX Working Group, and the University System of Maryland (USM) Policy on Sexual Harassment (VI-1.60). The committee also reviewed background information on the Title IX regulations provided by the DOE. In addition, the EDI Committee reviewed the following value and mission statements of the University:

- [Inclusion and Respect at the University of Maryland](#) (Spring 2018);
- [University of Maryland, College Park Mission Statement](#) (August 2018); and
- [University of Maryland Statement of Free Speech](#) (Spring 2018).

The committee consulted with its ex-officio representative from the OCRSM, who serves as the University's Title IX Officer, and a representative from the Office of General Counsel to learn more about the development of the interim Policy and the legal framework associated with its development, including an overview of the Title IX regulations and the impact of Maryland state law. The committee also had the opportunity to submit questions and its concerns to the Title IX Working Group to receive additional insight about some of the Policy recommendations. The committee received feedback on the interim Policy and its impact on the campus community from key stakeholders represented by University Human Resources (UHR), the Office of Faculty Affairs (OFA), the Office of Student Conduct (OSC), and several stakeholder groups including CARE to Stop Violence (CARE), the Sexual Assault Prevention Committee (SAPC), the Graduate Student

Government (GSG), Preventing Sexual Assault (PSA), and the Student Government Association (SGA) Sexual Misconduct Prevention Committee (SMP).

The feedback from the stakeholders aligned with the committee's discussions. A significant and consistent concern among the stakeholders is that the formality and legal nature of the adjudication process required by the federal regulations, particularly that Parties have to participate in a live Hearing and would be subject to cross-examination, could lead to survivors not reporting offending conduct. Some of the common themes expressed by the stakeholders include:

- The importance of strong peer support and recognition that survivors struggle with determining whether their experiences were “bad enough” to warrant them obtaining help.
- Survivors need options between staying silent or reporting a matter and having to go through a formal adjudication process.
- The process and procedures for addressing offending conduct should not retraumatize survivors.
- The Policy and Procedures need to be clear and explicit, especially regarding the definition of Sexual Assault and the offenses that fall within that definition.
- The descriptions of the rights and resources available to survivors needs to be in plain language.
- Up-to-date resources including information sheets that explain the reasons for the recommended policy changes, need to be provided and maintained on the OCRSM website.

The feedback also included suggestions related to the specific provisions of the Policy. The suggestions included:

- Expand the definition of sexual assault to be more inclusive. The current definition is heavily gender-based and forced penetration, separate from the definition of rape, should be included.
- Further define the jurisdictional parameters of the Policy by specifically referencing Greek affiliated organizations and houses and other specific off-campus locations such as apartment buildings, and bars.
- Revise the statement in the Consent definition that advises that “relying on non-verbal communication can lead to misunderstandings” because the wording is ableist and not trauma-informed.
- Include the qualifications for Hearing Officers in its definition, particularly if a legal background is required.

The feedback also raised concerns about several procedural matters. The groups noted that the 120-day timeline may prevent survivors from engaging in the process, particularly if an incident occurs late in the academic year. There also were concerns that since the Standing Review Committee (SRC) will not be used to conduct hearings, there is a loss of constituency perspectives in the adjudication process. The stakeholders expressed appreciation for the University-based provisions of the Policy such as expanding the University's jurisdiction to include conduct that occurs outside of the United States; retaining the Preponderance of Evidence standard; and allowing Hearings to be conducted with technological means such as allowing Parties and witnesses to appear by video instead of face-to-face.

After the August 14, 2020 effective date, the DOE issued additional informal guidance on the interpretation and implementation of the revised regulations. Based on that guidance, in January 2021, the University's Title IX Working Group proposed additional revisions to the interim Policy and Procedures. The suggested changes to the Policy ranged from technical revisions that updated and clarified terminology, to substantive changes such as adding a provision against conflict of interest or bias against either Party by an individual in certain designated roles in Title IX investigation and adjudication processes. One substantive item resolved concerns raised by the committee and shared in feedback from campus organizations, in that the definition of Sexual Assault was revised to add Non-Consensual Sexual Penetration as an offense and removes gender-specific references to genitalia. The Working Group also revised the Emergency Removal provision by removing administrative leave as an option for staff and faculty Respondents because there is not a consistent means of imposing administrative leave on faculty and staff. The EDI committee reviewed the proposed revisions as part of its work on the charge.

The committee considered all of the feedback and consultation discussions during its review of the interim Policy and consideration of the charge elements. After due consideration, the Equity, Diversity, and Inclusion Committee approved the proposed revisions to the interim Policy on Sexual Harassment and Sexual Misconduct in an email vote concluding on April 26, 2021.

## COMMITTEE FINDINGS

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During its review, the committee discussed key principles and values that should underlie the Policy and be reflected in the content.

### Alignment with University Values

Overall, the committee found that the Interim Policy generally aligns with the values and mission of the University. The committee determined this based on steps the University took after the regulations were finalized to extend its jurisdiction to address conduct that occurs in the context of an Education Program or Activity outside of the United States and conduct that has a continuing adverse impact on or creates a hostile environment for individuals while on University premises or participating University programs or activities, even though the conduct occurred outside of a University Education Program or Activity. The committee also found that the University's efforts to mitigate the adverse impact of subjecting Parties to in-person Hearings and cross-examinations shows the University's commitment to having a process that considers the well-being of the Parties.

The committee determined that although elements within the Policy demonstrated the University's commitment to the safety and well-being of the campus community, this messaging may be lost in the details and legal language used throughout the Policy. Additionally, the committee expressed that the Policy should acknowledge that Prohibited Conduct can arise from power-based violence in addition to sexual violence and offenses. This reference is important because titles and constituency designations do not necessarily define the influence and control that can underlie many types of Prohibited Conduct. Based on these considerations, the committee proposed adding an Introduction to the Policy and revising the Purpose statement as reflected in the proposed Policy revisions. The committee believes that these revisions reinforce that one of the intentions of the Policy is to protect access to education, and the revisions may also help alleviate some of the general apprehension among campus community members about the changes to the Policy.

The committee also supported adding a general-purpose statement to Section IV, Reporting, that encourages prompt reporting of alleged Prohibited Conduct to ensure that all Parties affected by the alleged offensive conduct are provided with support and connected with confidential resources that

can provide counseling and healthcare services, emotional support, and assistance with advocacy. Including this statement shows that the University's first priority of responding to a report is to address the safety and well-being of the affected individuals.

### Responsible University Employee (RUE)

Related to Reporting, the committee recommended including graduate assistants among the list of Responsible University Employees (RUE) who are not confidential resources and who have an obligation to report to OCRSM when they become aware of incidents that may violate the Policy. Although graduate assistants are not defined to be employees of the University generally, the committee determined that it was appropriate to designate them as RUEs for purposes of this Policy. The committee observed that similar to resident assistants and faculty, graduate assistants have access to students in a way that makes it likely that students would discuss incidents with them. Additionally, graduate assistants already receive training on how to respond when they receive notice of alleged Prohibited Conduct, so codifying their responsibilities would be appropriate.

### Accessibility and Understanding

#### *Defining Prohibited Conduct*

Regarding clarity of the Policy, the committee had initial concerns that the Policy did not sufficiently use inclusive and gender-neutral language that would inform transgender, non-binary, and gender-nonconforming individuals that other individuals could be found responsible for Prohibited Conduct against them. Specifically, the committee noted that Sexual Assault was defined using gender-specific genital terms, and it included Sodomy, which is perceived to be an antiquated, homophobic reference. Changes in Maryland state law and additional guidance from DOE supported revising the definition of Sexual Assault to include Non-Consensual Sexual Penetration, which is described as a penetration of a genital opening by any sex organ. In the proposed revisions, Sodomy is no longer listed under Sexual Assault. With these changes and a revision to a related footnote to the definition of Non-Consensual Penetration, the committee finds that the Policy is more inclusive in describing the offenses that may be classified as Sexual Assault.

As directed in the charge from the SEC, the committee discussed whether there is an adverse impact because the interim Policy removes the defined term Sexual Violence that is included in the 2019 policy. The 2019 Sexual Misconduct Policy & Procedures defines "Sexual Violence" as physical sexual acts perpetrated without Consent and clarifies that Sexual Violence includes but is not limited to Sexual Harassment, Sexual Coercion, and Sexual Assault. The interim Policy definition for Sexual Assault includes Non-Consensual Sexual Penetration, Fondling, Incest, and Statutory Rape, and definitions are provided for Dating Violence and Domestic Violence. Given the inclusion of these definitions, the committee did not find that there is an adverse impact caused by the removal of Sexual Violence as a defined term in the interim Policy.

The committee discussed whether the offenses listed in Prohibited Conduct under Other Sexual Misconduct provided sufficient notice that a survivor could make a report based on the disclosure or threat of disclosure of personal sexual information that was obtained during a consensual relationship by a relationship participant or by a third-party. The committee considered it important that this conduct be recognized as an offense particularly because of the proliferation of the use of social media for this kind of disclosure. The committee proposed a revision to the definition of Sexual Exploitation to attempt to include this conduct. Through consultation with OGC and the Title IX Working Group, the committee was advised that the described conduct would not be actionable

under Sexual Exploitation because only actions undertaken for one's own benefit or the benefit of a third-party are within that definition. If the action was undertaken for the purpose to cause harm to another individual, the matter could be address under Other Sex-Based Offenses. Upon confirmation that the conduct could be deemed Prohibited Conduct under an existing definition, the committee did not pursue this recommendation.

The committee also considered whether the "sufficiently severe or pervasive" standard for Other Sex-Based Offenses is sufficient. The committee favored keeping the "severe or pervasive" standard under Other Sex-Based Offenses to provide an option for addressing conduct that may not meet the Title IX Hostile Environment standard, which requires conduct to be severe, pervasive, *and* objectively offensive. The less burdensome threshold under Other Sex-Based Offenses allows the University to address a greater span of alleged Prohibited Conduct. This is consistent with the University's commitment to maintaining a safe and secure environment for campus community members. The committee did discuss whether the Other Sexual Misconduct provision in Prohibited Conduct, which includes Other Sex-based Offenses, should identify that conduct as violations of University policy that can be pursued even if the action is dismissed under Title IX. The Title IX Working Group advised that making that distinction would be problematic because of considerations related to employment discrimination claims that are governed by different federal regulations, and that it is unnecessary because the University uses the same Procedures to adjudicate claims based on conduct defined under Title IX and Other Sexual Misconduct.

#### *Designation of Status for Individuals in More than One Constituency Group*

It is not uncommon for members of the campus community to be included in more than one constituency group, either simultaneously or transitionally. For example, a student may also be an employee, and an employee may take classes as a student. Because the Supportive Measures and Emergency Removal options that could be available can be dependent on the status of the Complainant or the Respondent, the committee discussed whether the Policy should include a provision that indicates how the status of Parties will be determined. Through consultations with OGC and the Title IX Working Group, the committee was advised that there are no bright lines for determining the status of individuals in advance of the circumstances giving rise to their participation in the process. This determination needs to be made on a case-by-case basis but with sufficient notice to the Parties.

#### *General Accessibility and Understanding*

As the committee heard in the feedback from various stakeholders, the federal regulations impose a number of requirements and provisions that make the process for addressing alleged offensive conduct very similar to formal legal proceedings. Additionally, the Policy and Procedures are required to use specific, legalistic language. The inclusion of the language and structure required by the federal regulations may lead some individuals to not report alleged offending conduct because they do not understand the process or because they are intimidated that the process will be overwhelming. Therefore, the committee suggested to OCRSM that in addition to the recommended revisions in the Policy to make it more reader-friendly and accessible, plain language educational and awareness materials should be made available for campus community members.

A particular part of the process that the committee finds that may not be clearly understandable by reading the Policy and Procedures is the availability of Supportive Measures. Many individuals may believe that they need to pursue a Formal Complaint through adjudication to receive assistance or resolution of a matter. The committee agreed that information on the University's procedures,

including the adjudication process, should be provided in plain language or a format that can be visualized. Easily accessible information on the support resources available to members of the campus community, information on the variety of ways that a matter can be addressed, and a commitment to ensuring that the information is up-to-date and uses inclusive language would be valuable contributions to the educational outreach associated with the policy and procedures. In addition, the committee also agreed that the University's commitment to educational initiatives and training opportunities for all members of the campus community will allow for a cohesive message of the University's values and how the Prohibited Conduct defined in this policy violates those values. The committee shared its perspectives with the Title IX Officer who noted that the OCRSM was already working on additional materials and resources for its website and training initiatives.

### *Diversity & Inclusion*

The University's campus community is diverse in a variety of dimensions from race and ethnicity to gender-identity and disability status. The committee received feedback from stakeholders who noted that the terms used as well as the manner of communication, really matter to individuals. They emphasized that being mindful of those considerations can help avoid the potential to re-traumatize survivors. While this issue is not a matter that needs to be addressed with a revision to the Policy, the committee agreed that principles of diversity and inclusion should be embedded throughout the University's processes as well as addressed in the processes associated with this Policy and Procedures in order to best serve the University community and affirm its values.

### *Designation of Rights of Parties*

The committee agrees with the January 2021 revision proposed by the Title IX Working Group to add a provision that individuals designated by the University to serve as a Title IX Officer, Investigator, Hearing or Appellate Hearing Officer, or Informal Resolution facilitator must not have a conflict of interest or bias against either Party. The committee recommended moving the provision from Reporting, as proposed by the Working Group, to Rights of Parties. The committee believes that including the guidance in the Rights of Parties section further demonstrates the University's commitment to having a process that is protective and affords due process to the Parties. Additionally, having the provision in that section makes it more accessible.

## **RECOMMENDATIONS**

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The Equity, Diversity, and Inclusion Committee recommends that Interim University of Maryland Policy on Sexual Harassment and Other Sexual Misconduct (VI-1.60[A]) should be revised as shown immediately following this report.

## **APPENDICES**

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- Appendix 1 – DOE Summary of Major Provisions of Title IX Final Rule
- Appendix 2 – DOE Title IX Final Rule Overview Guiding Principles
- Appendix 3 – Charge from the Senate Executive Committee



**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, 2020<sup>+</sup>)

**Policy Index**

- I. **Introduction**
- ~~I.II.~~ Purpose
- ~~II.III.~~ **Scope and** Applicability
- ~~III.IV.~~ Jurisdiction
- ~~IV.V.~~ Reporting
- ~~V.VI.~~ Amnesty for Students Who Report Prohibited Conduct
- ~~VI.VII.~~ Definitions
- ~~VII.VIII.~~ Prohibited Conduct
- ~~VIII.IX.~~ Sanctions
- ~~IX.X.~~ Confidential Resources
- ~~X.XI.~~ Co-Occurring Criminal Action
- ~~XI.XII.~~ Rights of Parties
- ~~XII.XIII.~~ False Statements
- ~~XIII.XIV.~~ Legal Representation Fund for Title Proceedings (Students Only)
- ~~XIV.XV.~~ Emergency Removals and Other Interim Measures
- ~~XV.XVI.~~ Consensual Relationships and Professional Conduct
- ~~XVI.XVII.~~ Training
- ~~XVII.XVIII.~~ Records Retention
- ~~XVIII.XIX.~~ External Government Agencies

**Procedures Index**

- I. **Applicability**
- ~~I.II.~~ Anticipated Timelines
- ~~II.III.~~ Right to Support Person and Advisor
- IV. Notification of Meetings, Interviews, and Hearing**
- ~~III.V.~~ Report Intake and Formal Complaint
- ~~IV.VI.~~ Resolution Processes

<sup>+</sup>~~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. Introduction

The mission of the University of Maryland (“the University”) is to cultivate a transformative educational, scholarly, and professional experience for all members of its campus community while safeguarding their personal health and well-being. The University is committed to creating a collaborative environment open to the free exchange of ideas, where scholarship, creativity, innovation, and entrepreneurship can flourish and where individuals can achieve their full potential. The University affirms that commitment by striving to maintain an academic and work environment that empowers all to work, study, innovate, and perform without fear of sexual misconduct, sexual violence, and power-based violence. Such misconduct and violence diminish individual dignity, are contrary to the values of the University, and are a barrier to the fulfillment of the University’s mission. It is incumbent upon every member of the University community to foster an environment free from sexual misconduct by upholding the University’s core mission and values, and by working together to avoid harmful situations through a shared understanding of how to prevent sexual misconduct and how to address it if it occurs.

## II. Purpose

**Prohibited Conduct undermines the character and purpose of the University and the University will take appropriate prompt and effective action to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. The purpose of this Policy and Procedures is to describe the Prohibited Conduct; describe how to report or file a complaint; provide resources for counseling, safety, emotional support, and advocacy; articulate the procedures for investigating and resolving complaints; and articulate awareness and educational training objectives.**

~~The University of Maryland (University) is committed to creating and maintaining a working and learning environment free from all forms of Sexual Harassment,<sup>2</sup> Other Sexual Misconduct, and Retaliation.~~ The University ~~accomplishes this~~ **acknowledges its commitment to a working and learning environment free from sexual misconduct** through training, education, prevention programs, **and** policies and procedures that promote prompt reporting and response, provide support to persons alleged to be victimized, prohibit ~~R~~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 **are Prohibited Conduct and** 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, **and the University will address such conduct in accordance with this Policy.**

~~Creating an environment free from this Prohibited Conduct is the responsibility of all~~

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<sup>2</sup>~~Capitalized terms are defined in this Policy in the Definitions and Prohibited Conduct sections.~~

~~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.~~

### **H.III. Scope and 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 **Maryland** sState 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 also is in compliance with the University's obligations under Maryland law and University System of Maryland Policy VI-1.60.**

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 benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." **The University, under this Policy, goes beyond Title IX to include in its Prohibited Conduct other forms of sexual misconduct that are antithetical to the University's core mission and values. 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.**

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. **The University of Maryland fulfills those requirements through these Procedures. This Policy and Procedures govern all forms of Prohibited Conduct that is alleged to be in violation of Title IX and this Policy.**

~~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 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.**

~~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.IV. Jurisdiction**

- A.** This Policy applies to reported acts of Prohibited Conduct committed by or against students, faculty, staff, and third parties when:
  - 1.** conduct occurs on University premises, in any University facility, or on property owned or controlled by the University;
  - 2.** 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;

3. 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
  4. conduct otherwise threatens the health and/or safety of University members.
- B.** 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.V. Reporting**

##### **A. General**

**All persons are encouraged to report Prohibited Conduct promptly, in order to ensure that all Parties affected by the alleged Prohibited Conduct are provided with support and connected with available resources. Prompt reporting is also critical for the preservation of physical and other evidence, which may be important in the University's administrative process and/or to prove criminal conduct or to obtain a civil or criminal order of protection. In addition to reporting Prohibited Conduct, individuals may also speak with a confidential resource at any time, as detailed in Section X of this Policy.**

##### **B. Reporting to the Office of Civil Rights & Sexual Misconduct**

Any person may report Prohibited Conduct at any time by contacting the Title IX Coordinator/Officer (Title IX Officer) **or to the Office of Civil Rights & Sexual Misconduct (OCRSM)**, listed below, regardless of whether the reporting person is the Complainant.

**Grace C. Karmiol, 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: [gkarmiol@umd.edu](mailto:gkarmiol@umd.edu) | [titleixcoordinator@umd.edu](mailto:titleixcoordinator@umd.edu)

Telephone: 301-405-1142

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

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

~~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.<sup>3</sup> 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.oersm.umd.edu](http://www.oersm.umd.edu) | [titleixcoordinator@umd.edu](mailto: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~~ **Prompt reporting to OCRSM** ~~maximizes the University's ability to obtain evidence, identify potential witnesses, and conduct a 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](mailto: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.~~

### C. Reporting to a Responsible University Employee

**Any person may also report Prohibited Conduct to a Responsible University**

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<sup>3</sup>~~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.~~

**Employee (RUE) including but not limited to the University of Maryland Police Department (UMPD). A Responsible University Employee, as defined in Section VI, must promptly notify the Title IX Officer of any report of Prohibited Conduct brought to their attention<sup>4</sup>. 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.**

#### **B.D. 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 are Responsible University Employees under this Policy and are required to notify the Title IX Officer of any report of Prohibited Conduct.** 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.~~

#### **~~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.~~

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<sup>4</sup> 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.

#### **~~C~~.E. 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~~ victim.

#### **~~V~~.VI. Amnesty for Students Who Report Prohibited Conduct**

- A.** 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.
- B.** 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~~.VII. Definitions**

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

- A.** “**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.
- B.** “**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.

- C. **“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, **or third party**. Appellate Hearing Officers shall have had no previous involvement with the substance of the Formal Complaint.
- D. **“Complainant”** means the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.
- E. **“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.
1. 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.~~
  2. Previous relationships, including past sexual relationships, do not imply Consent to future sexual acts.
  3. Consent to one form of sexual activity cannot automatically imply Consent to other forms of sexual activity.
  4. 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.
  5. Consent cannot be obtained by use of physical force or Sexual Coercion.
  6. An individual who is Incapacitated is unable to give Consent.
- F. **“Day”** means a business **week**day when the University is not closed.
- G. **“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.
- H. **“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.

1. **“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.
- I. **“Hearing”** means a live, formal proceeding attended by the Parties **in person or by video conference** 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.
- J. **“Hearing Officer”** means an individual designated to preside over the Hearing and has decision-making and sanctioning authority within the adjudication process.
- K. **“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:
  1. making decisions about the potential consequences of sexual contact;
  2. appraising the nature of one’s own conduct;
  3. communicating Consent to sexual contact; or
  4. communicating unwillingness to engage in sexual contact.
- L. **“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.
- M. **“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.
- N. **“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.

- O. “Party”** means the Complainant or the Respondent (collectively, the “Parties”).
- P. “Preponderance of the Evidence”** means that it is more likely than not that a Policy violation has occurred.
- Q. “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.
- R. “Respondent”** means the individual alleged to have engaged in Prohibited Conduct under this Policy.
- S. “Responsible University Employee”** means all University administrators, supervisors, faculty members, **graduate assistants**, UMPD, athletic coaches, athletic trainers, resident assistants, and first responders, who are not confidential resources. **Responsible University Employee is a term of art for purposes of this Policy only and for no other purposes.**
- T. “Sanctions”** means disciplinary and other consequences imposed on a Respondent who is found to have violated this Policy.
- U. “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.
- V. “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.~~VIII. 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 Harassment**<sup>5</sup> 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 acts ~~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 (**Non-Consensual Sexual Penetration or Fondling**); also, unlawful sexual intercourse (Incest or Statutory Rape).

a. **Non-Consensual Sexual Penetration: Penetration, no matter how slight, of the genital or anal opening of the body of another person 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.**<sup>6</sup> **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.~~

~~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.~~

~~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.b. **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.

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<sup>5</sup> See 34 C.F.R. § 106.30 (defining "Sexual Harassment" under Title IX).

<sup>6</sup> **This definition encompasses the FBI uniform crime reporting system offenses required by Title IX.**

- e.c. **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- f.d. **Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent.<sup>7</sup>

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.

**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, **or otherwise does not fall under Title IX.**
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;

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<sup>7</sup> The statutory age of consent in Maryland is 16. *See* Md. Code Ann., Crim. Law §§ 3-301 to -307.

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.IX. Sanctions**

- A. As further explained in the Procedures, Sanctions for Respondents determined to have violated this Policy include, but are not limited to, the following:
  - 1. **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.
  - 2. **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.X. 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, **graduate assistant**, 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](http://www.health.umd.edu/care)  
Email: [uhc-care@umd.edu](mailto: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](http://health.umd.edu/fsap)  
Email: Tom Ruggieri [ruggieri@umd.edu](mailto:ruggieri@umd.edu) or Joan Bellsey [jbellesey@umd.edu](mailto:jbellesey@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](http://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](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

Website: <https://www.umms.org/capital/health-services/domestic-violence-sexual-assault>

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](mailto: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.

**~~XI~~. 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~~.XII. Rights of Parties**

Parties will be treated with dignity, respect, and sensitivity by University officials during all phases of the process. **The process for investigating and resolving reports and complaints must be free from conflict of interest or bias. Any individual designated by the University as a Title IX Officer, Investigator, Hearing Officer, Appellate Hearing Officer, or Informal Resolution facilitator must not have a conflict of interest or bias for or against Complainants or Respondents, generally, or for or against an individual Complainant or Respondent. To raise any concern involving bias or conflict of interest by the Title IX Officer, the Parties should contact the Vice President for Diversity and Inclusion, Georgina Dodge, Ph.D., via email at [gdodge1@umd.edu](mailto:gdodge1@umd.edu) upon discovery of the bias or conflict of interest. Concerns of**

**bias or a potential conflict of interest by any other individual involved in the resolution process should be raised with the Title IX Officer upon discovery. The accompanying Procedures provide further guidance on concerns related to conflicts of interest and bias.**

- A.** 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.
- B.** Parties will be given timely written notice of:
1. 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;
  2. Their rights and responsibilities under this Policy and information regarding other civil and criminal options;
  3. The date, time, ~~and~~ location, **participants, and purpose** of each Hearing, meeting, or interview that the Party is ~~required or permitted~~ **invited or expected** to attend, **with sufficient time for the Party to prepare to participate**;
  4. The final determination made by the Hearing Officer regarding whether a Policy violation occurred and the basis for the determination;
  5. Any Sanction imposed, as required by law; and
  6. The rights to appeal and a description of the appeal process.
- C.** 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:
1. 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;
  2. An opportunity to be heard through the process;
  3. An opportunity to offer testimony at a Hearing;
  4. 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;
  5. 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;
  6. An opportunity to review and provide written responses to draft and final investigation reports;
  7. An opportunity to participate at a Hearing without being required to be in the physical presence of the other Party;
  8. An opportunity to appeal a determination and/or Sanction; and

9. Notice, presented in an appropriate and sensitive format, before the start of the resolution process, of:
  - a. The Party's right to the assistance of an Advisor, including an attorney or advocate;
  - b. The legal service organizations and referral services available to the Party; and
  - c. The Party's right to have a Support Person of the Party's choice at any Hearing, meeting, or interview.

#### ~~XII~~.XIII. **False Statements**

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

#### ~~XIII~~.XIV. **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~~.XV. **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~~ **remove a Respondent for reasons arising from the alleged Prohibited Conduct from a University Education Program or Activity on an emergency basis** 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.

**B. Nothing herein prohibits the University from implementing Supportive Measures in accordance with this Policy and Procedures.**

**C. Student Respondents**

~~The University will not remove a student from the University based solely on an accusation. The A~~ student **Respondent** will be offered an opportunity to meet with the Director of Student Conduct or the Title IX Officer **or designee** to review the reliability of the information **and challenge the decision** 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.

#### **D. ~~Staff and Faculty~~ Other Respondents**

**Other Respondents will be offered an opportunity to meet with the Title IX Officer or designee to review the reliability of the information and challenge the decision within five (5) Days from the effective date of the emergency removal.**

**For 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 **implement emergency removals from the University's Education Program or Activity,** ~~take interim measures~~ such as changing a Respondent's work responsibilities or work location or placing the Respondent on leave during the resolution process, **following the process described above. The University retains the authority to implement Supportive Measures as appropriate.** ~~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.~~

#### **~~E. 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.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.

## ~~XVI~~.XVII. 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~~.XVIII. Records Retention

A. 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~~.XIX. **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](mailto: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](http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html)

E-mail: [OCR.Philadelphia@ed.gov](mailto:OCR.Philadelphia@ed.gov)

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule

Issue	The Title IX Final Rule: Addressing Sexual Harassment in Schools
<p>1. Notice to the School, College, University (“Schools”): Actual Knowledge</p>	<p>The Final Rule requires a K-12 school to respond whenever <i>any</i> employee has notice of sexual harassment, including allegations of sexual harassment. Many State laws also require all K-12 employees to be mandatory reporters of child abuse. For postsecondary institutions, the Final Rule allows the institution to choose whether to have mandatory reporting for all employees, or to designate some employees to be confidential resources for college students to discuss sexual harassment without automatically triggering a report to the Title IX office.</p> <p>For all schools, notice to a Title IX Coordinator, or to an official with authority to institute corrective measures on the recipient’s behalf, charges a school with actual knowledge and triggers the school’s response obligations.</p>
<p>2. Definition of Sexual Harassment for Title IX Purposes</p>	<p>The Final Rule defines sexual harassment broadly to include any of three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect: Any instance of <i>quid pro quo</i> harassment by a school’s employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).</p> <ul style="list-style-type: none"> <li>- The Final Rule prohibits sex-based misconduct in a manner consistent with the First Amendment. <i>Quid pro quo</i> harassment and Clery Act/VAWA offenses are <u>not</u> evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because such misconduct is sufficiently serious to deprive a person of equal access.</li> <li>- The Final Rule uses the Supreme Court’s <i>Davis</i> definition (<i>severe and pervasive and objectively offensive</i> conduct, effectively denying a person equal educational access) as one of the three categories of sexual harassment, so that where unwelcome sex-based conduct consists of speech or expressive conduct, schools balance Title IX enforcement with respect for free speech and academic freedom.</li> <li>- The Final Rule uses the Supreme Court’s Title IX-specific definition rather than the Supreme Court’s Title VII workplace standard (<i>severe or pervasive</i> conduct creating a hostile work environment). First Amendment concerns differ in educational environments and workplace environments, and the Title IX definition provides First Amendment protections appropriate for educational institutions where students are learning, and employees are teaching. Students, teachers, faculty, and others should enjoy free speech and academic freedom protections, even when speech or expression is offensive.</li> </ul>

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule

<p><i>3. Sexual Harassment Occurring in a School’s “Education Program or Activity” and “in the United States”</i></p>	<p>The Title IX statute applies to persons in the United States with respect to education programs or activities that receive Federal financial assistance. Under the Final Rule, schools must respond when sexual harassment occurs in the school’s education program or activity, against a person in the United States.</p> <ul style="list-style-type: none"> <li>- The Title IX statute and existing regulations contain broad definitions of a school’s “program or activity” and the Department will continue to look to these definitions for the scope of a school’s education program or activity. Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (such as a fraternity or sorority house).</li> <li>- Title IX applies to all of a school’s education programs or activities, whether such programs or activities occur on-campus or off-campus. A school may address sexual harassment affecting its students or employees that falls outside Title IX’s jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.</li> </ul>
<p><i>4. Accessible Reporting to Title IX Coordinator</i></p>	<p>The Final Rule expands a school’s obligations to ensure its educational community knows how to report to the Title IX Coordinator.</p> <ul style="list-style-type: none"> <li>- The employee designated by a recipient to coordinate its efforts to comply with Title IX responsibilities must be referred to as the “Title IX Coordinator.”</li> <li>- Instead of notifying only students and employees of the Title IX Coordinator’s contact information, the school must also notify applicants for admission and employment, parents or legal guardians of elementary and secondary school students, and all unions, of the name or title, office address, e-mail address, and telephone number of the Title IX Coordinator.</li> <li>- Schools must prominently display on their websites the required contact information for the Title IX Coordinator.</li> <li>- Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.</li> <li>- Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator.</li> </ul>
<p><i>5. School’s Mandatory Response Obligations: The Deliberate Indifference Standard</i></p>	<p>Schools must respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means a response that is not clearly unreasonable in light of the known circumstances. Schools have the following mandatory response obligations:</p> <ul style="list-style-type: none"> <li>- Schools must offer supportive measures to the person alleged to be the victim (referred to as the “complainant”).</li> </ul>

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule

	<ul style="list-style-type: none"> <li>- The Title IX Coordinator must promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant’s wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.</li> <li>- Schools must follow a grievance process that complies with the Final Rule before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent.</li> <li>- Schools must not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, when complying with Title IX.</li> <li>- The Final Rule requires a school to investigate sexual harassment allegations in any formal complaint, which can be filed by a complainant, or signed by a Title IX Coordinator.</li> <li>- The Final Rule affirms that a complainant’s wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.</li> <li>- If the allegations in a formal complaint do not meet the definition of sexual harassment in the Final Rule, or did not occur in the school’s education program or activity against a person in the United States, the Final Rule clarifies that the school must dismiss such allegations <i>for purposes of Title IX</i> but may still address the allegations in any manner the school deems appropriate under the school’s own code of conduct.</li> </ul>
<p>6. <i>School’s Mandatory Response Obligations:</i>  <i>Defining</i>  <i>“Complainant,”</i>  <i>“Respondent,”</i>  <i>“Formal Complaint,”</i>  <i>“Supportive Measures”</i></p>	<p>When responding to sexual harassment (e.g., by offering supportive measures to a complainant and refraining from disciplining a respondent without following a Title IX grievance process, which includes investigating formal complaints of sexual harassment), the Final Rule provides clear definitions of complainant, respondent, formal complaint, and supportive measures so that recipients, students, and employees clearly understand how a school must respond to sexual harassment incidents in a way that supports the alleged victim and treats both parties fairly.</p> <p>The Final Rule defines “complainant” as an individual <i>who is alleged to be the victim</i> of conduct that could constitute sexual harassment.</p> <ul style="list-style-type: none"> <li>- This clarifies that any third party as well as the complainant may report sexual harassment.</li> <li>- While parents and guardians do not become complainants (or respondents), the Final Rule expressly recognizes the legal rights of parents and guardians to act on behalf of parties (including by filing formal complaints) in Title IX matters.</li> </ul> <p>The Final Rule defines “respondent” as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.</p>

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule

	<p>The Final Rule defines “formal complaint” as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment and states:</p> <ul style="list-style-type: none"> <li>- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.</li> <li>- A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under the Final Rule, and by any additional method designated by the school.</li> <li>- The phrase “document filed by a complainant” means a document or electronic submission (such as by e-mail or through an online portal provided for this purpose by the school) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.</li> <li>- Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during a grievance process, and must comply with requirements for Title IX personnel to be free from conflicts and bias.</li> </ul> <p>The Final Rule defines “supportive measures” as individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.</p> <ul style="list-style-type: none"> <li>- The Final Rule evaluates a school’s selection of supportive measures and remedies based on what is not clearly unreasonable in light of the known circumstances, and does not second guess a school’s disciplinary decisions, but requires the school to offer supportive measures, and provide remedies to a complainant whenever a respondent is found responsible.</li> </ul>
<p>7. <i>Grievance Process, General Requirements</i></p>	<p>The Final Rule prescribes a consistent, transparent grievance process for resolving formal complaints of sexual harassment. Aside from hearings (see Issue #9 below), the grievance process prescribed by the Final Rule applies to all schools equally including K-12 schools and postsecondary institutions. The Final Rule states that a school’s grievance process must:</p> <ul style="list-style-type: none"> <li>- Treat complainants equitably by providing remedies any time a respondent is found responsible, and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process prescribed in the Final Rule.</li> <li>- Remedies, which are required to be provided to a complainant when a respondent is found responsible, must be designed to maintain the complainant’s equal access to education and may include the same individualized services described in the Final Rule as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.</li> <li>- Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person’s status as a complainant, respondent, or witness.</li> </ul>

## Summary of Major Provisions of the Department of Education's Title IX Final Rule

- Require Title IX personnel (Title IX Coordinators, investigators, decision-makers, people who facilitate any informal resolution process) to be free from conflicts of interest or bias for or against complainants or respondents.
- Training of Title IX personnel must include training on the definition of sexual harassment in the Final Rule, the scope of the school's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- A school must ensure that decision-makers receive training on any technology to be used at a live hearing.
- A school's decision-makers and investigators must receive training on issues of relevance, including how to apply the rape shield protections provided only for complainants.
- Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- Recipients must post materials used to train Title IX personnel on their websites, if any, or make materials available for members of the public to inspect.
- Include reasonably prompt time frames for conclusion of the grievance process, including appeals and informal resolutions, with allowance for short-term, good cause delays or extensions of the time frames.
- Describe the range, or list, the possible remedies a school may provide a complainant and disciplinary sanctions a school might impose on a respondent, following determinations of responsibility.
- State whether the school has chosen to use the preponderance of the evidence standard, or the clear and convincing evidence standard, for all formal complaints of sexual harassment (including where employees and faculty are respondents).
- Describe the school's appeal procedures, and the range of supportive measures available to complainants and respondents.
- A school's grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- Any provisions, rules, or practices other than those required by the Final Rule that a school adopts as part of its grievance process for handling formal complaints of sexual harassment, must apply equally to both parties.

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule

<p><i>8. Investigations</i></p>	<p>The Final Rule states that the school must investigate the allegations in any formal complaint and send written notice to both parties (complainants and respondents) of the allegations upon receipt of a formal complaint. During the grievance process and when investigating:</p> <ul style="list-style-type: none"> <li>- The burden of gathering evidence and burden of proof must remain on schools, not on the parties.</li> <li>- Schools must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.</li> <li>- Schools must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag orders”).</li> <li>- Parties must have the same opportunity to select an advisor of the party’s choice who may be, but need not be, an attorney.</li> <li>- Schools must send written notice of any investigative interviews, meetings, or hearings.</li> <li>- Schools must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence.</li> <li>- Schools must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.</li> <li>- Schools must dismiss allegations of conduct that do not meet the Final Rule’s definition of sexual harassment or did not occur in a school’s education program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate.</li> <li>- Schools may, in their discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.</li> <li>- Schools must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.</li> <li>- Schools may, in their discretion, consolidate formal complaints where the allegations arise out of the same facts.</li> <li>- The Final Rule protects the privacy of a party’s medical, psychological, and similar treatment records by stating that schools cannot access or use such records unless the school obtains the party’s voluntary, written consent to do so.</li> </ul>
<p><i>9. Hearings:</i></p>	<p>The Final Rule adds provisions to the “live hearing with cross-examination” requirement for postsecondary institutions and clarifies that hearings are optional for K-12 schools (and any other recipient that is not a postsecondary institution).</p>

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule

<p>(a) <i>Live Hearings &amp; Cross-Examination (for Postsecondary Institutions)</i></p>	<p>(a) For postsecondary institutions, the school’s grievance process must provide for a live hearing:</p> <ul style="list-style-type: none"> <li>- At the live hearing, the decision-maker(s) must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.</li> <li>- Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party’s advisor of choice and never by a party personally.</li> <li>- At the request of either party, the recipient must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other.</li> <li>- Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party’s advisor asking cross-examination questions any decision to exclude a question as not relevant.</li> <li>- If a party does not have an advisor present at the live hearing, the school must provide, without fee or charge to that party, an advisor of the school’s choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party.</li> <li>- If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.</li> <li>- Live hearings may be conducted with all parties physically present in the same geographic location or, at the school’s discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually.</li> <li>- Schools must create an audio or audiovisual recording, or transcript, of any live hearing.</li> </ul>
<p>(b) <i>Hearings are Optional, Written Questions Required (for K-12 Schools)</i></p>	<p>(b) For recipients that are K-12 schools, and other recipients that are not postsecondary institutions, the recipient’s grievance process may, <i>but need not</i>, provide for a hearing:</p> <ul style="list-style-type: none"> <li>- With or without a hearing, after the school has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.</li> </ul>
<p>(c) <i>Rape Shield Protections for Complainants</i></p>	<p>(c) The Final Rule provides rape shield protections for complainants (as to all recipients whether postsecondary institutions, K-12 schools, or others), deeming irrelevant questions and evidence about a complainant’s prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.</p>

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule

<p><i>10. Standard of Evidence &amp; Written Determination</i></p>	<p>The Final Rule requires the school’s grievance process to state whether the standard of evidence to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard. The Final Rule makes each school’s grievance process consistent by requiring each school to apply the same standard of evidence for all formal complaints of sexual harassment whether the respondent is a student or an employee (including faculty member).</p> <ul style="list-style-type: none"> <li>- The decision-maker (who cannot be the same person as the Title IX Coordinator or the investigator) must issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.</li> <li>- The written determination must be sent simultaneously to the parties along with information about how to file an appeal.</li> </ul>
<p><i>11. Appeals</i></p>	<p>The Final Rule states that a school must offer both parties an appeal from a determination regarding responsibility, and from a school’s dismissal of a formal complaint or any allegations therein, on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.</p> <ul style="list-style-type: none"> <li>- A school may offer an appeal equally to both parties on additional bases.</li> </ul>
<p><i>12. Informal Resolution</i></p>	<p>The Final Rule allows a school, in its discretion, to choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. Any person who facilitates an informal resolution must be well trained. The Final Rule adds:</p> <ul style="list-style-type: none"> <li>- A school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. Similarly, a school may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed.</li> <li>- At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.</li> <li>- Schools must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.</li> </ul>

## Summary of Major Provisions of the Department of Education's Title IX Final Rule

<p><i>13. Retaliation Prohibited</i></p>	<p>The Final Rule expressly prohibits retaliation.</p> <ul style="list-style-type: none"><li>- Charging an individual with code of conduct violations that do not involve sexual harassment, but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation.</li><li>- The school must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.</li><li>- Complaints alleging retaliation may be filed according to a school's prompt and equitable grievance procedures.</li><li>- The exercise of rights protected under the First Amendment does not constitute retaliation.</li><li>- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.</li></ul>
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## U.S. Department of Education Title IX Final Rule Overview

### GUIDING PRINCIPLES

- **Historic Recognition of Sexual Harassment as Sex Discrimination**

For the first time, the Department’s Title IX regulations recognize that sexual harassment, including sexual assault, is unlawful sex discrimination. The Department previously addressed sexual harassment only through guidance documents, which are not legally binding and do not have the force and effect of law. Now, the Department’s regulations impose important legal obligations on school districts, colleges, and universities (collectively “schools”), requiring a prompt response to reports of sexual harassment. The Final Rule improves the clarity and transparency of the requirements for how schools must respond to sexual harassment under Title IX so that every complainant receives appropriate support, respondents are treated as responsible only after receiving due process and fundamental fairness, and school officials serve impartially without bias for or against any party.

- **Supporting Complainants & Respecting Complainants’ Autonomy**

Under the Final Rule, schools must offer free supportive measures to every alleged victim of sexual harassment (called “complainants” in the Final Rule). Supportive measures are individualized services to restore or preserve equal access to education, protect student and employee safety, or deter sexual harassment. Supportive measures must be offered even if a complainant does not wish to initiate or participate in a grievance process. Every situation is unique, and individuals react to sexual harassment differently. Therefore, the Final Rule gives complainants control over the school-level response best meeting their needs. It respects complainants’ wishes and autonomy by giving them the clear choice to file a formal complaint, separate from the right to supportive measures. The Final Rule also provides a fair and impartial grievance process for complainants, and protects complainants from being coerced or threatened into participating in a grievance process.

- **Non-Discrimination, Free Speech, and Due Process**

The Final Rule reflects core American values of equal treatment on the basis of sex, free speech and academic freedom, due process of law, and fundamental fairness. Schools must operate free from sex discrimination, including sexual harassment. Complainants and respondents must have strong, clear procedural rights in a predictable, transparent grievance process designed to reach reliable outcomes. The Final Rule ensures that schools do not violate First Amendment rights when complying with Title IX.

### A SCHOOL’S RESPONSE TO SEXUAL HARASSMENT

- Under the Final Rule, any of the following conduct on the basis of sex constitutes sexual harassment:
  - A school employee conditioning an educational benefit or service upon a person’s participation in unwelcome sexual conduct (often called “*quid pro quo*” harassment);
  - 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 school’s education program or activity; or
  - Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a)).

## U.S. Department of Education Title IX Final Rule Overview

- Consistent with Supreme Court precedent and the text of Title IX, a school must respond when: (1) the school has actual knowledge of sexual harassment; (2) that occurred within the school's education program or activity; (3) against a person in the United States. The Final Rule expands "actual knowledge" to include notice to any elementary or secondary school employee, and states that any person (*e.g.*, the alleged victim or any third party) may report to a Title IX Coordinator in person or by e-mail, phone, or mail. The Final Rule also specifies that a school's "education program or activity" includes situations over which the school exercised substantial control, and also buildings owned or controlled by student organizations officially recognized by a postsecondary institution, such as many fraternity and sorority houses.
- Consistent with Supreme Court precedent, a school violates Title IX when its response to sexual harassment is clearly unreasonable in light of the known circumstances, and the Final Rule adds mandatory response obligations such as offering supportive measures to every complainant, with or without a formal complaint.
- Schools must investigate every formal complaint (which may be filed by a complainant or by a school's Title IX Coordinator). If the alleged conduct does not fall under Title IX, then a school may address the allegations under the school's own code of conduct and provide supportive measures.

### A FAIR GRIEVANCE PROCESS

The Final Rule requires schools to investigate and adjudicate formal complaints of sexual harassment using a grievance process that incorporates due process principles, treats all parties fairly, and reaches reliable responsibility determinations. A school's grievance process must:

- Give both parties written notice of the allegations, an equal opportunity to select an advisor of the party's choice (who may be, but does not need to be, an attorney), and an equal opportunity to submit and review evidence throughout the investigation;
- Use trained Title IX personnel to objectively evaluate all relevant evidence without prejudice of the facts at issue and free from conflicts of interest or bias for or against either party;
- Protect parties' privacy by requiring a party's written consent before using the party's medical, psychological, or similar treatment records during a grievance process;
- Obtain the parties' voluntary, written consent before using any kind of "informal resolution" process, such as mediation or restorative justice, and not use an informal process where an employee allegedly sexually harassed a student;
- Apply a presumption that the respondent is not responsible during the grievance process (often called a "presumption of innocence"), so that the school bears the burden of proof and the standard of evidence is applied correctly;
- Use either the preponderance of the evidence standard or the clear and convincing evidence standard (and use the same standard for formal complaints against students as for formal complaints against employees);
- Ensure the decision-maker is not the same person as the investigator or the Title IX Coordinator (*i.e.*, no "single investigator models");
- For postsecondary institutions, hold a live hearing and allow cross-examination by party advisors (never by the parties personally); K-12 schools do not need to hold a hearing, but parties may submit written questions for the other parties and witnesses to answer;
- Protect all complainants from inappropriately being asked about prior sexual history ("rape shield" protections);

## **U.S. Department of Education Title IX Final Rule Overview**

- Send both parties a written determination regarding responsibility explaining how and why the decision-maker reached conclusions;
- Effectively implement remedies for a complainant if a respondent is found responsible for sexual harassment;
- Offer both parties an equal opportunity to appeal;
- Protect any individual, including complainants, respondents, and witnesses, from retaliation for reporting sexual harassment or participating (or refusing to participate) in any Title IX grievance process;
- Make all materials used to train Title IX personnel publicly available on the school's website or, if the school does not maintain a website, make these materials available upon request for inspection by members of the public; and
- Document and keep records of all sexual harassment reports and investigations.

### **SEX DISCRIMINATION REGULATIONS**

Relating to sex discrimination generally, and not only to sexual harassment, the final regulations also:

- Affirm that the Department may require schools to take remedial action for discriminating on the basis of sex or otherwise violating the Department's Title IX regulations;
- Expressly state that in response to any claim of sex discrimination under Title IX, schools are never required to deprive an individual of rights guaranteed under the U.S. Constitution;
- Account for the interplay of Title IX, Title VII, and FERPA, as well as the legal rights of parents or guardians to act on behalf of individuals with respect to exercising Title IX rights;
- Update the requirement for schools to designate and identify a Title IX Coordinator, disseminate their non-discrimination policy and the Title IX Coordinator's contact information to ensure accessible channels for reporting sex discrimination (including sexual harassment), and notify students, employees, parents, and others of how the school will respond to reports and complaints of sex discrimination (including sexual harassment); and
- Clarify that an institution controlled by a religious organization is not required to submit a written statement to the Department to qualify for the Title IX religious exemption.



**Interim University of Maryland Policy on Sexual Harassment and Other Sexual Misconduct (Senate Document #20-21-03)**  
**Equity, Diversity, Inclusion (EDI) Committee | Chair: Raymond Nardella**

On May 6, 2020, the Department of Education (DOE) issued new Title IX regulations, which direct how educational institutions must address incidents of sexual assault and harassment involving both students and employees. The University System of Maryland (USM) revised its Policy on Sexual Harassment (VI-1.60) on July 22, 2020 and asked all USM institutions to align their policies accordingly. On August 14, 2020, President Pines approved an interim University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct (VI-1.60[A]), pending Senate review.

The Senate Executive Committee (SEC) and Senate Chair Dugan request that the Equity, Diversity, and Inclusion (EDI) Committee review the policy component of the interim University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct (VI-1.60[A]).

Specifically, the EDI Committee should:

1. Review the USM Policy on Sexual Harassment ([VI-1.60](#)).
2. Review the interim University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct ([VI-1.60\[A\]](#)).
3. Review information on the U.S. Department of Education's Final Rule under Title IX of the Education Amendments of 1972.
4. Review policies regarding sexual misconduct at Big 10 and other peer institutions.
5. Consult with a representative of the Office of Civil Rights & Sexual Misconduct (OCRSM).
6. Consult with a representative of the Office of Faculty Affairs.
7. Consult with a representative of the Office of Student Conduct.
8. Consult with a representative of the Office of Staff Relations.
9. Consult with a representative of CARE to Stop Violence on their perspectives on the interim University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct.
10. Consult with the Sexual Assault Prevention Committee (SAPC) on its perspectives on the interim University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct.

11. Consult with the Chair of the Student Government Association's (SGA) Sexual Misconduct Prevention Committee and the Title IX Advisory Board on students' perspectives on the interim University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct.
12. Consult with a representative of the Office of General Counsel on the legal implications of the new Title IX regulations.
13. Consider whether the interim policy fulfills the minimum requirements related to federal regulations and state law, and also goes beyond the minimum requirements, where appropriate, in order to align with the University's principles and values.
14. Consider whether modifications to the policy are needed to provide clarity and consistency to ensure that the policy is clearly articulated to the campus community.
15. Consider whether the standard for Other Sex-Based Offenses, "sufficiently severe or pervasive," is sufficient.
16. Consider whether the definition of Responsible University Employee in the policy should be inclusive of graduate assistants, undergraduate teaching assistants, and staff with instructional responsibilities.
17. Consider whether there is an adverse impact caused by the removal of Sexual Violence as a defined term in the policy.
18. Consider whether the constituencies referenced in the policy should be more clearly defined in order to address situations where a party serves in multiple constituency roles at once, or where a party's role has changed since the incident in question occurred.
19. Consider whether information about on-campus resources and reporting that is described in the policy should be included as a separate attachment to the policy in order to provide flexibility for revisions outside of policy review cycles.
20. Consult with a representative of the Office of General Counsel on any proposed revisions to the interim policy.
21. If appropriate, recommend whether the interim policy should be revised.

We ask that you submit a report to the Senate Office no later than **March 30, 2021**. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, extension 5-5804.