



## Review of the Interim Sexual Misconduct Student Procedures

**PRESENTED BY** Andrea Dragan, Chair

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

**VOTING METHOD** In a single vote

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

**NECESSARY APPROVALS** Senate, President

### ISSUE

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

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

### RECOMMENDATIONS

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

The Student Conduct Committee recommends that it be charged with considering the impact of the MHEC Legal Representation Fund on student Complainants and Respondents after implementation of the program in order to determine whether additional revisions to the Student Procedures or to practices are needed.

### COMMITTEE WORK

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The Student Conduct Committee (SCC) began its review at its meeting on September 10, 2019. It reviewed the interim University of Maryland Sexual Misconduct Policy & Procedures, the USM Policy on Sexual Misconduct, Senate Bill 396 (Higher Education – Legal Representation Fund for Title IX Proceedings), and Senate Bill 607 (Higher Education – Sexual Assault Policy – Disciplinary

Proceedings Provisions). The SCC consulted with representatives from the Office of Student Conduct, Office of Rights & Responsibilities, Office of Civil Rights & Sexual Misconduct (OCRSM) and the Office of General Counsel (OGC) throughout its review. The SCC also worked in close consultation with the EDI, Staff Affairs, and Faculty Affairs Committees.

The SCC developed revisions to the Student Procedures to ensure that the rights for Complainants and Respondents that are stated in the Policy can be seen in practice in the Student Procedures. The SCC also developed minor revisions to the Alternative Resolution section of the Student Procedures after learning that Alternative Resolution would serve as the informal mechanism for resolving complaints required by the USM and interim UMD Policies. In its review, the SCC also considered the new MHEC Legal Representation Fund and worked with the EDI Committee to clarify language related to the program. The SCC remains unsure of how effective the program will be at serving student needs, given the details are still being developed, and made an administrative recommendation to revisit the impact of the program on UMD students.

The Student Conduct Committee voted to approve the revised Student Sexual Misconduct Complaint Procedures and an administrative recommendation at its meeting on November 8, 2019.

## **ALTERNATIVES**

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

## **RISKS**

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There are no known risks to the University.

## **FINANCIAL IMPLICATIONS**

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There are no known financial implications.



## Review of the Interim Sexual Misconduct Student Procedures

### 2019-2020 Committee Members

**Andrea Dragan** (Chair)  
**Kiara Anthony** (Undergraduate Student)  
**Neijma Celestine-Donnor** (Staff)  
**Raul Cruz-Cano** (Faculty)  
**Nelson Gomes Boronat** (Student)  
**Andrea Goodwin** (Ex-Officio Director of Student Conduct)  
**Ursula Gorham-Oscilowski** (Faculty)  
**Angela Lambert** (Undergraduate Student)

**Charles Manekin** (Faculty)  
**Michael Robidoux** (Undergraduate Student)  
**Megan Stump** (Graduate Student)  
**Hilary Thompson** (Faculty)

### Date of Submission

**November 2019**

## BACKGROUND

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

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

## UNIVERSITY OF MARYLAND SEXUAL MISCONDUCT POLICY & PROCEDURES

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

In 2018, the Maryland General Assembly passed [Senate Bill 607](#) (Higher Education - Sexual Assault Policy – Disciplinary Proceedings Provisions). The law affected disciplinary proceedings for

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

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

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

## **COMMITTEE WORK**

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The Student Conduct Committee (SCC) began its review at its meeting on September 10, 2019. It reviewed the interim University of Maryland Sexual Misconduct Policy & Procedures, the USM Policy on Sexual Misconduct, Senate Bill 396 (Higher Education – Legal Representation Fund for Title IX Proceedings), and Senate Bill 607 (Higher Education – Sexual Assault Policy – Disciplinary Proceedings Provisions). The SCC consulted with representatives from the Office of Student Conduct, Office of Rights & Responsibilities, Office of Civil Rights & Sexual Misconduct (OCRSM) and the Office of General Counsel (OGC) throughout its review. The SCC also worked in close consultation with the EDI, Staff Affairs, and Faculty Affairs Committees, which were tasked with reviewing the Policy and the Staff and Faculty Procedures, respectively. The committees worked collaboratively to ensure that any revisions to the Policy were aligned with the corresponding information in the Procedures, and to ensure that the Procedures for each constituency articulated the same rights and responsibilities for all Complainants and Respondents.

The SCC focused much of its review on the new MHEC Legal Representation Fund. The committee considered how to best reference the program in the Student Procedures while understanding that MHEC is still in the process of developing the program. The SCC worked with the EDI Committee to consider revisions to more clearly convey the scope of the program in language presented in both the Policy and the Procedures. The SCC noted that the new program is a resource, rather than a right, and worked to ensure that the language clarified that students are not guaranteed legal representation from MHEC, nor are they required to retain an attorney. The SCC remains unsure of how effective the program will be at serving student needs, given the details are still being developed. The SCC developed an administrative recommendation to revisit the impact of the

program on UMD students after the program has been implemented, in order to consider whether changes to the Procedures or to current practice will be needed to ensure that students are able to access attorneys with the help of the MHEC program.

During its review, the SCC worked to ensure that the rights for Complainants and Respondents that are stated in the Policy can be seen in practice in the Student Procedures. The committee compared the list of rights in the interim Policy to the Student Procedures and found that most of the rights were clearly indicated in the Procedures. There were a few instances where rights were not stated clearly, so the SCC developed revisions to ensure consistency between the Policy and practice. The SCC also developed minor revisions to the Alternative Resolution section of the Student Procedures after learning that Alternative Resolution would serve as the informal mechanism for resolving complaints required by the USM and interim UMD Policies.

After due consideration, the Student Conduct Committee voted to approve the revised Student Sexual Misconduct Complaint Procedures and an administrative recommendation at its meeting on November 8, 2019.

## **RECOMMENDATIONS**

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

The Student Conduct Committee recommends that it be charged with considering the impact of the MHEC Legal Representation Fund on student Complainants and Respondents after implementation of the program in order to determine whether additional revisions to the Student Procedures or to practices are needed.

## **APPENDICES**

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

Appendix 2 — Charge from the Senate Executive Committee

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  - C. Party Obligations
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## APPENDIX A: STUDENT SEXUAL MISCONDUCT COMPLAINT PROCEDURES

### I. OVERVIEW

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

Both the Complainant and Respondent may participate or decline to participate in the complaint process. As appropriate, the Title IX Officer and the Director of Student Conduct will determine whether the Investigation and University Resolution processes will proceed without the participation by one or both parties. A lack of participation by a party does not necessarily preclude a finding of a Policy violation or the imposition of appropriate disciplinary action.

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

Reference herein to the Title IX Officer includes the Director of the Office of Civil Rights and Sexual Misconduct (OCRSM) and designees. Reference herein to the Director of Student Conduct includes the Assistant Director of Resident Life for Student Conduct in the Office of Rights and Responsibilities (R&R) and designees.

### II. RIGHTS TO SUPPORT PERSON AND ADVISOR

Throughout the process, any party may be accompanied to any meeting related to an investigation and resolution of a complaint by up to two (2) other people: (1) a Support Person, and/or (2) an Advisor. Meetings include, but are not limited to, the following meetings concerning a report: meetings with the OCRSM, meetings with the Office of Student Conduct (OSC), investigative interviews, document reviews, Disciplinary Conferences with the Director of Student Conduct, Standing Review Committee (SRC) Conferences, Alternative Resolutions, and sanction meetings.

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

#### A. Support Person

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

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### B. Advisor

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

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

### C. Party Obligations

Throughout the process, the Title IX Officer or designee, Investigator(s), and other University representatives will communicate and correspond directly with the parties, not through a Support Person or Advisor. Parties are responsible for ensuring that Support Persons and Advisors follow the non-party participation requirements below. When a party wishes to have a Support Person or Advisor accompany them to a meeting, the party must notify the OCRSM or the OSC in advance. Parties are also responsible for making sure appropriate authorization exists (e.g., authorization related to the Family Educational Rights and Privacy Act [FERPA]) for the University to communicate the non-party participation requirements below to any Support Person or Advisor.

### D. Non-Party Participant Requirements

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

## III. REPORTING

**Faculty, staff, students, and third parties may report Sexual Misconduct on their own behalf or on behalf of others.** ~~Complaints and other~~ Reports of Sexual Misconduct against a student may be made to the following:



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- The Office of Civil Rights & Sexual Misconduct (OCRSM),
- The Office of Student Conduct (OSC), or
- The Department of Resident Life, Office of Rights and Responsibilities (R&R).

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

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

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

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

### **IV. COMPLAINT INTAKE PROCESS**

#### **A. Notification to the Complainant**

Upon receipt of a complaint, the OCRSM will ensure that the Complainant is provided with a copy of the Policy and Student Procedures and informed of their rights and responsibilities. Either the OSC or the OCRSM will provide information to the Complainant about the University's internal administrative complaint process and review with them their respective

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rights and responsibilities. The Complainant will be informed of available community and campus resources and services; their right to a Support Person and the Support Person's role; their right to an Advisor and the Advisor's role; their right to file a report with law enforcement; and the University's prohibition against retaliation. The Complainant will have an opportunity to ask questions and seek additional information.

### **B. Requests for Confidentiality**

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

### **C. Initial Assessment of Complaint**

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

The first step in the Initial Assessment is a preliminary meeting between the Complainant and the OCRSM and/or the OSC to gather information that will enable the OCRSM, in consultation with other offices, as appropriate, to:

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

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

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

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

### **D. Interim Protective Measures**

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

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

## **V. RESOLUTION PROCESSES**

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

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

### **B. Alternative Resolution Process**

Alternative Resolution is a process whereby remedies and interventions may serve to address the alleged Prohibited Conduct without proceeding to an investigation and adjudication. Alternative Resolution is not appropriate for complaints involving ~~Sexual Violence, including~~ Sexual Assault **or Sexual Coercion**. Neither party is required to accept responsibility for the alleged

## APPENDIX A: STUDENT SEXUAL MISCONDUCT COMPLAINT PROCEDURES

Prohibited Conduct in order to proceed with Alternative Resolution. Either party **may request an Alternative Resolution process. At any time, either party may** decide not to proceed with Alternative Resolution and may request an investigation and adjudication ~~at any time~~.

The Title IX Officer **or designee** has the discretion to determine whether a complaint is appropriate for Alternative Resolution and retains discretion to terminate an ongoing Alternative Resolution process at any time.

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

- Increased monitoring, supervision, and/or security at locations or activities where the Prohibited Conduct occurred or is likely to reoccur;
- Targeted or broad-based educational programming or training for relevant individuals or groups;
- Academic and/or housing modifications for Student Complainants;
- Workplace modifications for Complainants;
- Completion of projects, programs, or requirements designed to help the Respondent manage behavior, refrain from engaging in Prohibited Conduct, and understand why the Prohibited Conduct is prohibited;
- Compliance with orders of no contact that limit access to specific University buildings or areas or forms of contact with particular persons; and
- Completion of up to sixty (60) hours of community service over a period not to exceed twelve (12) weeks under guidelines established by the OCRSM in consultation with the OSC.

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

Where the Complainant, Respondent, and the University have reached an Alternative Resolution agreement, the parties will be provided with a written copy of the agreement. Entering into Alternative Resolution and signing an agreement does not mean that the Respondent admits responsibility; nor does it mean that there has been a finding of a Policy violation. The Title IX Officer will maintain all records of matters referred for Alternative Resolution.

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### C. Investigation Process

When the Initial Assessment determines the University has jurisdiction over the Respondent and the alleged conduct, and where Alternative Resolution is not appropriate, an investigation will occur.

#### 1. Standard of Review

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

#### 2. Preliminary Meeting

Prior to an investigation, the OCRSM and/or the OSC will notify both parties and require their attendance (separately) at a preliminary meeting with the OSC. The parties will be informed of the purpose of the meeting. The purpose of the meeting is to ensure students are provided adequate information about the investigation and adjudication process, and have an opportunity to ask and receive answers to any questions they may have. When a party does not attend the preliminary meeting with the OSC, the University shall proceed with an investigation, noting the party’s lack of attendance at the preliminary meeting.

##### a. Notice of Potential Policy Violation and Investigation

At the preliminary meeting, the Respondent will be informed verbally and in writing of: the circumstances of the alleged incident (which generally will include, to the extent known, the name of the Complainant and the date, time, and location), the Prohibited Conduct alleged as defined by the Policy, and the range of potential sanctions associated with the Prohibited Conduct. If a Respondent does not attend the preliminary meeting, the University will provide the Respondent with the information in writing. A copy of the Notice of Potential Policy Violation and Investigation will also be provided to the Complainant.

Both parties will also be informed during the preliminary meeting that they will have an opportunity to be heard regarding the complaint during the investigation process, including the opportunity to be heard during an interview with an Investigator regarding the alleged Sexual Misconduct.

##### b. Notice of Rights and Responsibilities

Both parties will be provided with a copy of the Policy and Student Procedures and informed verbally (if present at the Preliminary Meeting) and in writing of their rights and responsibilities pursuant to the Policy. This includes but is not limited to: no contact

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directives (and provided a copy), prohibitions against retaliation and guidance about reporting any retaliatory conduct, **the right to the presence of a Support Person and/or an Advisor**, and available community and campus resources and services.

### 3. Role of the Investigator

The Title IX Officer will designate an Investigator(s) from the OCRSM and/or an external Investigator to conduct a prompt, thorough, fair, and impartial investigation. All Investigators will receive annual training on issues related to sexual and gender-based harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking. The training will also include how to conduct a fair and impartial investigation that provides parties with notice and a meaningful opportunity to be heard, as well as how to protect the safety of Complainants and the University community while promoting accountability.

### 4. Overview of the Investigation

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

#### a. Special Considerations

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

At the discretion of the OCRSM, multiple reports may be consolidated in one investigation if the information related to each incident is relevant in reaching a determination. Matters may be consolidated where they involve multiple Complainants, multiple Respondents, or related



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conduct involving the same parties, provided that it does not delay the prompt investigation and resolution of complaints.

### **b. Draft Report**

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

### **c. Notice of Opportunity to Review the Draft Investigation Report**

Before the investigation report is finalized, the parties will be given an opportunity to review and respond to the draft report. Upon receipt of notice to review the draft report, the parties will each have five (5) business days to review the report and all underlying documents and submit comments, information, and/or questions to the Investigator(s). If there is any new or additional information to be provided by either party, it must be presented to the Investigator at this time. If further investigation is warranted based on the comments, information, and/or questions provided during the review period, the Investigator will continue the investigation, as needed.

### **d. Final Investigation Report**

Upon timely receipt of any additional information or comments from the parties or after the five (5) business day comment period has lapsed with no comments provided, and the investigation is complete, the Investigator will finalize the investigation report. The final investigation report will include all relevant information obtained in the course of the investigation, an analysis and proposed findings of material fact, and a recommendation by the Investigator as to whether the information gathered establishes, by a preponderance of the evidence, a potential Policy violation by the Respondent.

Both parties will be contacted by the OSC, and directed to contact the OSC to schedule separate meetings with the Director of Student Conduct to discuss next steps.

## **VI. ADJUDICATION**

### **A. Meeting with Director of Student Conduct**

The Director of Student Conduct will meet separately with each party to explain next steps and provide each party with a confidential copy of the final investigation report, including all attachments.

- When an investigation concludes with a recommended finding of a Policy violation, and the Director of Student Conduct determines that either expulsion or suspension is a possible sanction, the matter will be referred automatically to the Standing Review Committee (SRC) for an administrative determination of the initial outcome.
- When an investigation concludes with a recommended finding of a Policy violation, and the Director of Student Conduct determines that neither expulsion nor suspension is a possible sanction, the OSC will resolve the Complaint by facilitating a Disciplinary Conference.

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- In all cases when an investigation concludes with a finding of no Policy violation and the Director of Student Conduct concurs with the finding, the Director of Student Conduct will meet separately with both parties to discuss next steps.
- In all cases when an investigation concludes with a finding of no Policy violation and the Director of Student Conduct does not concur with the finding, the Director of Student Conduct may request additional investigation and/or determine the appropriate next steps.

At the meeting, the Director of Student Conduct will explain the relevant process to each party, and inform each party of the date and time of the SRC Conference or Disciplinary Conference, if applicable.

Each party will be allowed five (5) business days to submit a written response to the final investigation report, which will be considered by the respective reviewer, i.e., the SRC or the Director of Student Conduct during the SRC or Disciplinary Conference process, as appropriate. All written responses will be shared with the other party prior to the SRC review or Disciplinary Conference.

In order to protect the privacy of all individuals involved, all materials shared with the parties are considered confidential and should not be publicly disclosed or released.

### **B. Disciplinary Conference**

The Director of Student Conduct facilitates Disciplinary Conferences. Each party will be given an opportunity to speak separately to the Director of Student Conduct in person and respond to the information presented in the final investigation report. The Director of Student Conduct will consider any written response to the final investigation report submitted by the parties before issuing a decision.

The Disciplinary Conference decision shall be in writing and will include Policy violation findings and a rationale for the decision. The Disciplinary Conference Decision shall be issued to both the Complainant and Respondent.

Determinations by the Director of Student Conduct in a Disciplinary Conference shall be based on the preponderance of the evidence. In the event that the Director of Student Conduct finds that a Respondent is responsible for Prohibited Conduct, the Director of Student Conduct shall determine an appropriate sanction and/or remedy, as described in section VII below.

Before a sanction and/or remedy are issued, the parties shall have the opportunity to submit impact and mitigation statements, as described in section VII below. Sanctions and remedies imposed as a result of a finding of responsibility for Prohibited Conduct after a Disciplinary Conference will not include expulsion or suspension. If either party disagrees with the outcome of the Disciplinary Conference, they may appeal pursuant to section VIII below.

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### C. Standing Review Committee (SRC) Conference

The role of the SRC is to review cases where a Policy violation could result in a sanction of suspension or expulsion. The SRC's role is to review all the available information and determine, independent of the Investigator's recommendation, whether it is more likely than not that the reported Prohibited Conduct occurred, constituting a Policy violation.

The SRC is a five (5) member body composed of at least three (3) faculty or staff (at least one of whom is faculty) and at least one (1) student who receive on-going training to serve in this capacity, including a Chair who facilitates the conference. SRC members are obligated to disclose to the OSC any known conflicts prior to participating in any specific SRC Conference. Conflicts or familiarity with the individuals involved in the matter that are disclosed to the OSC will automatically disqualify an individual SRC member from participation in any particular review.

Both parties will be notified of the date, time, and location of the SRC Conference. If either or both parties are not in attendance, the SRC Conference may proceed. The parties are not required to participate and the SRC may not draw any adverse inference from a decision by either party not to participate. **The parties will be given an opportunity to participate remotely or otherwise engage in the Conference without being required to be in the physical presence of the other party.** The Investigator is required to attend all SRC Conferences. The SRC and/or a party may request the attendance of witnesses who provided information to the Investigator.

The SRC Conference offers the parties an opportunity to address the SRC members, in person, about the allegations, and have their respective questions asked and answered. The parties may address any information in the final investigation report and supplemental responses. The parties may not directly question each other or any witness, but may submit written questions (to the SRC Chair) for the SRC to ask the Investigator, the other party, and/or any witnesses who are present. The SRC may exercise reasonable discretion to decline to ask questions submitted by the parties that are harassing, unnecessarily repetitive, or irrelevant.

#### 1. SRC Conference Format

The SRC Conference generally begins with the SRC Chair introducing the purpose of the conference, identifying all persons present, and then inviting the Investigator to summarize the Investigation and explain the evidence relevant to the alleged Prohibited Conduct in violation of the Policy. The SRC may pose questions directly to the Investigator, the parties, and any other witnesses. When the SRC has concluded its questioning, the Chair will invite the parties to submit written questions to be asked by the SRC of any of the witnesses, parties, or the Investigator. When all questioning is concluded, the parties will be given an opportunity to make brief closing statements. The SRC will then adjourn and the parties are excused.

If and when appropriate, the SRC, in its discretion, may suspend its review and request further investigation. Once the Investigator has concluded any further investigation, and if the

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recommendation by the Investigator is that there is sufficient evidence to support a finding of Prohibited Conduct in violation of the Policy (using a preponderance of the evidence standard), another SRC Conference will be scheduled. The OSC will use best efforts to complete this process as promptly as possible, and will notify the parties of the status, as appropriate.

### **2. SRC Decision**

The SRC will issue a written decision based on its review. The decision is determined by majority vote. The SRC decision will include findings of relevant fact and a finding as to whether the Respondent engaged in the Prohibited Conduct in violation of the Policy, or not (based on a preponderance of evidence standard).

If the SRC finds the Respondent responsible for a Policy violation by a preponderance of the evidence, the matter will proceed through the impact/mitigation statement phase, as well as the sanctioning phase below.

If the SRC does not find the Respondent responsible for a Policy violation based on a preponderance of the evidence, the Complainant may appeal the SRC Decision pursuant to section VIII below. If there is no appeal, the case is resolved, and notice of the final outcome will be issued.

## **VII. REMEDIES AND SANCTIONS**

Any Disciplinary Conference or SRC decision will be sent by the OSC to the parties. Where there is a finding of responsibility, both parties have the opportunity, within three (3) business days from the date of receipt of the decision, to submit statements for consideration by the Director of Student Conduct in determining an appropriate sanction.

### **A. Impact Statement and Mitigation Statement**

The Complainant may submit a written Impact Statement to the Director of Student Conduct describing the impact of the Prohibited Conduct on the Complainant.

The Respondent may submit a written Mitigation Statement to the Director of Student Conduct explaining any factors the Respondent believes should mitigate or otherwise be considered in determining the sanction(s).

The Director of Student Conduct will consider any impact and mitigation statements in determining the remedies and sanctions to be imposed. The parties' respective statements will not be shared with the other party.

### **B. Remedies**

The Title IX Officer, in consultation with the OSC, will identify reasonable short-term and/or long-term remedies to address the effects of the conduct on the Complainant, prevent its reoccurrence, restore the Complainant's safety and well-being, and maximize the Complainant's

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educational opportunities. Such remedies seek to restore to the Complainant, to the extent possible and within reason, the benefits and opportunities lost as a result of the Prohibited Conduct.

The Title IX Officer may also identify remedies, such as training for specific audiences, to address the effects of the conduct on the larger University community.

Remedies include, but are not limited to:

- **Supportive measures**, such as: extended classwork deadline, or flexible deadlines, change of venue for taking an exam, change in exam date, and/or retaking of an exam.
- **Academic accommodations** such as: retroactive drop from a particular class, retroactive withdrawal from a semester, policy exemption requests, and/or tuition reimbursement.
- **Additional remedies** such as: no contact orders, denial of access, housing accommodations, schedule changes, counseling and/or referral to outside agencies.

### C. Sanction Considerations

The imposition of disciplinary sanctions is designed to eliminate Prohibited Conduct under the Policy, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and federal obligations. Disciplinary sanctions may include educational, restorative, and rehabilitative components, such as completion of an educational project, removal from University housing, removal from specific courses or activities, and disciplinary probation. Some behavior, however, is so egregious in nature, harmful to the individuals involved, or so deleterious to the educational process that it requires more severe sanctions, including suspension or expulsion from the University.

The Director of Student Conduct will determine the appropriate disciplinary sanction in every Sexual Misconduct case. In reaching this determination, the following factors will be considered:

- The nature and degree of violence of the conduct at issue;
- The impact of the conduct on the Complainant;
- The impact or implications of the conduct on the community and/or the University;
- Prior relevant misconduct by the Respondent, including the Respondent's relevant prior discipline history;
- Breach of a prior Alternative Resolution agreement;
- Respondent's acceptance of responsibility for the conduct;
- Maintenance of a safe and respectful environment conducive to learning;
- Protection of the University community and the University; and
- Any other mitigating, aggravating, or compelling circumstances to reach a just and appropriate resolution in each case.

### D. Sanctions

When the Director of Student Conduct concludes that a sanction of expulsion or suspension is

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appropriate, and the Respondent has not already been suspended on an interim basis, there will be an immediate assessment by the Director of Student Conduct to determine whether the Respondent poses a serious disruption to the learning environment or a continuing danger to other members of the University community or University property. Interim suspension may be imposed at this point pending conclusion of the Appeal, where appropriate. Interim Protective Measures already in effect will continue pending Appeal. Disciplinary sanctions for Policy violations may include, but are not limited to:

- **Educational Requirements.** Completion of projects, programs, or requirements designed to help the student manage behavior and understand why certain behavior is inappropriate.
- **“No Contact” Orders or Denial of Access.** Compliance with orders of no contact that limit access to specific University areas or forms of contact with particular persons.
- **Housing Restrictions.** Exclusion from University housing or change in housing arrangements.
- **Community Service.** The OSC will monitor completion of up to sixty (60) hours of community service over a period not to exceed twelve (12) weeks under guidelines established by the OCRSM in consultation with the OSC.
- **Disciplinary Reprimand.** The student is warned that further misconduct may result in more severe disciplinary action.
- **Disciplinary Probation.** The student shall not represent the University in any extracurricular activity or run for or hold office in any student group or organization. Additional restrictions or conditions may also be imposed. Notification will be sent to appropriate University offices, including the Office of Campus Programs.
- **Suspension.** The student is separated from the University for a specified period of time. A permanent notation will appear on the student’s transcript. The student shall not participate in any University-sponsored activity and may be barred from University premises. Suspended time will not count against any time limits of the Graduate School for completion of a degree.
- **Expulsion.** The student is permanently separated from the University. A permanent notation will appear on the student’s transcript. The student will also be barred from the University premises.

### E. Notice of Sanction

Once a sanction is determined, the OSC will issue written notification of the sanction to both parties, as allowed by law, and provide the parties with information about their rights to appeal, per section VIII below. This constitutes the conclusion of the initial outcome phase.

## VIII. APPEALS

The Complainant and Respondent may appeal the outcome of a Disciplinary or SRC Conference, including the sanction issued under either process. The scope of the appeal is limited to the grounds set forth below. Mere dissatisfaction with the decision and sanction is not a valid basis for appeal. An appeal must be submitted in writing within five (5) business days of the date of receipt of the notice of sanction. If an appeal is received by the OSC, the other party will be



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notified and given five (5) business days from the date of receipt of the notice to respond. Responses shall be submitted directly to the OSC. Appeals filed by each party will be considered together in one appeal review process. All appeal documents will be shared with the other party. Appeals will be decided by an SCC Appellate Body (as defined in section VIII. C below).

If neither party submits an appeal, the decision and sanction are final after five (5) business days from the date of receipt of the notice to respond. Appeals submitted after five (5) business days shall be denied.

### **A. Grounds for Appeal**

Grounds for appeal shall be limited to:

#### **1. Substantial Procedural Error**

Specified procedural errors or errors in interpretation of University policy that were so substantial as to effectively deny a Complainant or a Respondent notice or a fair opportunity to be heard. Mere deviations from procedures that were not so substantial as to deny a Complainant or Respondent notice or a fair opportunity to be heard will not be a basis for sustaining an appeal.

#### **2. New Evidence**

New and significant relevant information has become available which a reasonably diligent person could not have discovered during the Investigation phase and/or prior to the issuance of the Disciplinary Conference or SRC Decision, as applicable.

#### **3. Sanction**

Sanction is substantially disproportionate to the offense. The sanction is substantially disproportionate to the facts of the particular Policy violation. This basis for appeal is limited to cases involving sanctions of expulsion or suspension.

### **B. Considerations**

Appeals are not intended to allow for a second review of the facts of the case and determination of whether there was a Policy violation. A review of the matter will be prompt and narrowly tailored to the stated grounds for appeal. In most cases, appeals are confined to a review of the written record and the pertinent documentation regarding the grounds for appeal.

When the basis of the Appeal is new evidence, the SCC Appellate Body will determine whether the information is new and was unavailable at the time of the investigation. If the SCC Appellate Body determines that the information is not new and was available at the time, the Appeal will be denied. If the information is determined to be new and unavailable at the time of the investigation, the SCC Appellate Body will make a determination whether the new information

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could change the outcome of the SRC or Disciplinary Conference decision. If it is determined that the outcome could be impacted by the new evidence, the case will be sent back to the SRC or to the Director of Student Conduct for further review.

### **C. SCC Appellate Body**

The University Senate Student Conduct Committee (SCC) is the designated appellate body for all appeals under these Student Procedures. The SCC Appellate Body is composed of three (3) members from the SCC (including at least one [1] student) who have had no previous involvement with the case, and have been trained to review such cases. Deference shall be given to the determinations of the SRC or Disciplinary Conference as applicable. The SCC Appellate Body considers any written appeal submission and, based on its review, may:

- Affirm the Decision and the sanction imposed;
- Affirm the Decision and reduce, but not eliminate, the sanction; or
- Remand the case to the SRC or Disciplinary Conference, in accordance with section VI, above.

The SCC Appellate Body Chair will render a written decision on the appeal to the OSC within ten (10) business days from the date of the submission of all appeal documents. Appeal decisions by the SCC Appellate Body are final with the exception of cases involving expulsion or suspension that require approval by the Vice President for Student Affairs.

## **IX. FINAL OUTCOME**

After all review processes are concluded (or when the time for an appeal has passed with no appeal submitted, whichever is later), the OSC will promptly notify the Complainant and Respondent, in writing, of the final outcome of the Sexual Misconduct complaint.

## **X. RECORDS RETENTION**

The OCRSM will maintain records of all complaints, Initial Assessments, investigations, adjudications, appeals, and Alternative Resolutions arising under the Policy in accordance with the University's Records Retention and Disposal Schedule.

The OSC will maintain disciplinary records for all cases that result in a finding of a Policy violation in accordance with the University's Records Retention and Disposal Schedule. Disciplinary records may be retained for longer periods of time or permanently, if so specified in the sanction.

## **XI. ACADEMIC TRANSCRIPTS AND EFFECT OF WITHDRAWAL**

Disciplinary sanctions of expulsion and suspension are permanently noted on a Respondent's academic transcript. When a Respondent requests their transcript, the existence of a pending Investigation is also noted. In the event a Respondent chooses to withdraw from the University prior to the resolution of disciplinary charges under the Policy, or where the Respondent declines to participate in the University proceedings under the Policy, the University will continue to

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process the disciplinary action in the student's absence. When a Respondent withdraws before resolution of pending disciplinary charges, the Respondent is ineligible to return to the University until the disciplinary proceedings have been resolved. In the event the student graduates while an Investigation and Resolution is pending, issuance of the student's diploma will be withheld until the case is concluded. Academic transcripts will be withheld until the matter is resolved or marked "Disciplinary Action Pending."

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

After a sanction or remedy is issued, if the Complainant agrees, the Title IX Officer or the OSC may periodically contact the Complainant to ensure the Prohibited Conduct has ended and to determine whether additional remedies are necessary. The Complainant may decline future contact at any time. The Title IX Officer or the OSC may periodically contact the Respondent to assure compliance with any sanctions that have been imposed. Any violation by a Respondent of a sanction and/or protective measure imposed under the Policy should be reported to the Director of Student Conduct, and a failure by the University to provide a specified disciplinary action and/or remedy should be reported to the OCRSM.

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