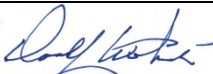




SENATE LEGISLATION APPROVAL

Date:	April 24, 2015
To:	Wallace D. Loh
From:	Donald Webster Chair, University Senate 
Subject:	Review of the Interim University of Maryland Sexual Misconduct Policy
Senate Document #:	14-15-11


I am pleased to forward for your consideration the attached legislation entitled, "Review of the Interim University of Maryland Sexual Misconduct Policy." Terry Owen, Chair of the Equity, Diversity, and Inclusion (EDI) Committee, presented the proposal. The University Senate approved the proposal at its April 23, 2015 meeting.

We request that you inform the Senate Office of your decision as well as any subsequent action related to your conclusion.

Enclosure: Review of the Interim University of Maryland Sexual Misconduct Policy
Senate Document # 14-15-11

DW/rm

Cc: Mary Ann Rankin, Senior Vice President and Provost
Reka Montfort, Executive Secretary and Director, University Senate
Juan Uriagereka, Associate Provost for Faculty Affairs
Michael Poterala, Vice President and General Counsel
Janet Turnbull, Office of General Counsel
Elizabeth Beise, Associate Provost for Academic Planning & Programs
Sylvia B. Andrews, Academic Affairs
Catherine Carroll, Director, Office of Civil Rights & Sexual Misconduct
Linda Clement, Vice President for Student Affairs
Carlo Colella, Vice President for Administration & Finance
Jewel Washington, Assistant Vice President for Human Resources
Andrea Goodwin, Director, Office of Student Conduct

Approved: 
Wallace D. Loh
President

Date: 05-04-2015



University Senate TRANSMITTAL FORM

Senate Document #:	14-15-11
PCC ID #:	N/A
Title:	Review of the Interim University of Maryland Sexual Misconduct Policy
Presenter:	Terry Owen, Chair, Senate Equity, Diversity, & Inclusion (EDI) Committee
Date of SEC Review:	April 9, 2015
Date of Senate Review:	April 23, 2015
Voting (highlight one):	<ol style="list-style-type: none"> 1. On resolutions or recommendations one by one, or 2. In a single vote 3. To endorse entire report 4. For information only
Statement of Issue:	<p>A Joint President/Senate Sexual Harassment Policies & Procedures Task Force reviewed the University's existing policies and procedures on sexual harassment from June 2012 to October 2013. At that time, the University had two standalone policies related to issues of sexual misconduct (the VI-1.20[A] University of Maryland Policy and Procedures on Sexual Harassment and the VI-1.30[A] University of Maryland Procedures on Sexual Assault and Misconduct). The Joint Task Force ultimately recommended that an umbrella policy on sexual misconduct be created to replace the two separate policies on sexual harassment and sexual assault that were in place at the University. The University Senate and the University President approved the Joint Task Force's report and proposed University of Maryland Sexual Misconduct Policy in October 2013.</p> <p>After a reauthorization of the Violence Against Women Act (VAWA) in 2013, the University System of Maryland (USM) developed a system-level policy on Sexual Misconduct in June 2014, with input from the Office of the Attorney General. All USM institutions were asked to revise their institution-level policies to align with the new USM policy by the end of 2014. The USM policy includes a section devoted to defining the language used throughout the policy. The University administration established a revised University of</p>

	<p>Maryland Sexual Misconduct Policy & Procedures (VI-1.60[A]) document in October 2014 as an interim policy for the University, pending Senate review.</p> <p>In fall 2014, the Senate Executive Committee (SEC) charged the Senate Equity, Diversity, & Inclusion (EDI) Committee with reviewing the interim policy and considering whether the proposed interim policy is in alignment with the USM policy and Federal guidelines. Specifically, the EDI Committee was charged to review the University’s interim Sexual Misconduct Policy (VI-1.60[A]), as well as the USM Policy on Sexual Misconduct (VI-1.60). The committee was also asked to review the guidance provided by the U.S. Department of Education’s Office for Civil Rights (OCR) regarding the 2013 reauthorization of VAWA. In addition, the committee was asked to review policies for sexual misconduct at peer institutions and Big 10 institutions. Finally, the SEC asked the committee to recommend whether revisions to the interim policy are needed.</p>
<p>Relevant Policy # & URL:</p>	<p>University of Maryland Sexual Misconduct Policy & Procedures http://www.president.umd.edu/policies/2014-VI-160A.html</p>
<p>Recommendation:</p>	<p>Throughout the review of this charge, the EDI Committee became keenly aware of the desire amongst campus constituents to edit the definitions of sexual assault and sexual contact in the interim University policy, in order to more closely align with those included in the USM policy and elsewhere. The committee also identified areas of the interim policy where minor and technical changes were needed. Therefore, the committee recommends a number of edits to the University of Maryland Sexual Misconduct Policy (VI-1.60[A]), as indicated in the policy document immediately following its report. The EDI Committee approved these recommended edits to the policy on March 26, 2015 and recommends that the edited document become official University policy.</p>

<p>Committee Work:</p>	<p>The EDI Committee worked on this charge throughout the 2014-2015 academic year. The committee reviewed the language in the University’s interim policy, as well as the USM policy. The committee noted that the main differences that exist between the University’s interim policy and the USM policy occur within the section on Prohibited Conduct. The committee consulted with the Title IX Officer & Director of the Office of Civil Rights and Sexual Misconduct (OSM) about the development of the interim policy and the re-wording of the prohibited conduct definitions.</p> <p>The committee also thoroughly reviewed guidance from the White House Task Force to Protect Students from Sexual Assault, information about Title IX and the Reauthorization of the Violence Against Women Act (VAWA), peer institution research from institutions within the Big Ten Conference and USM, as well as feedback from the campus community collected via two open Town Hall meetings, a student-led petition, and resolutions from the Graduate Student Government and the Student Government Association.</p> <p>The committee developed a number of edits to the University of Maryland Sexual Misconduct Policy (VI-1.60[A]), which it recommends be incorporated into the official University policy.</p>
<p>Alternatives:</p>	<p>To not accept or to amend the committee’s recommended changes to the University of Maryland Sexual Misconduct Policy (VI-1.60[A]).</p>
<p>Risks:</p>	<p>There are no associated risks.</p>
<p>Financial Implications:</p>	<p>There are no financial implications.</p>
<p>Further Approvals Required:</p>	<p>Senate approval, Presidential approval.</p>

Senate Equity, Diversity, & Inclusion (EDI) Committee
Report – Senate Document 14-15-11
Review of the Interim University of Maryland Sexual Misconduct Policy
April 2015

BACKGROUND

A Joint President/Senate Sexual Harassment Policies & Procedures Task Force reviewed the University's existing policies and procedures on sexual harassment from June 2012 to October 2013. At that time, the University had two standalone policies related to issues of sexual misconduct (the VI-1.20[A] University of Maryland Policy and Procedures on Sexual Harassment and the VI-1.30[A] University of Maryland Procedures on Sexual Assault and Misconduct). The Joint Task Force ultimately recommended that a new umbrella policy on sexual misconduct be created to replace the two separate policies on sexual harassment and sexual assault that were in place at the University. The University Senate and the University President approved the Joint Task Force's report and proposed University of Maryland Sexual Misconduct Policy in October 2013.

After a reauthorization of the Violence Against Women Act (VAWA) in 2013, the University System of Maryland (USM) developed a system-level policy on Sexual Misconduct in June 2014, with input from the Office of the Attorney General. The Office of the Attorney General worked with USM to ensure that the overall guidance in the USM Policy on Sexual Misconduct (VI-1.60) was legally sufficient. All USM institutions were asked to revise their institution-level policies to align with the new USM policy by the end of 2014. The USM policy includes a section devoted to defining the language used throughout the policy. While each USM institution may adopt its own policy definitions and prohibited conduct definitions, institutions were encouraged to adopt elements as defined in the USM policy, so as to ensure consistency and a shared level of expectation across institutions. The University administration established a revised University of Maryland Sexual Misconduct Policy & Procedures (VI-1.60[A]) document in October 2014 as an interim policy for the University, pending Senate review.

In November 2014, the Senate Executive Committee (SEC) charged the Senate Equity, Diversity, & Inclusion (EDI) Committee with reviewing the interim policy and considering whether the proposed interim policy is in alignment with the USM policy and Federal guidelines (see Appendix 1 for the official charge). Specifically, the EDI Committee was charged to review the University's interim Sexual Misconduct Policy (VI-1.60[A]), as well as the USM Policy on Sexual Misconduct (VI-1.60) (see appendix 2 for the USM Policy on Sexual Misconduct). The EDI Committee was also asked to review the guidance provided by the U.S. Department of Education's Office for Civil Rights (OCR) regarding the 2013 reauthorization of VAWA. In addition, the EDI Committee was asked to review similar policies for sexual misconduct at peer institutions and other Big 10 institutions. Finally, the SEC asked the EDI Committee to recommend whether revisions to the interim policy are needed.

There are three appendices to the interim Sexual Misconduct Policy, which describe the procedures to be used when responding to, investigating, and resolving complaints of sexual misconduct against students, staff, and faculty. The Senate Student Conduct Committee has been charged with reviewing Appendix A (Student Sexual Misconduct Investigation & Adjudication Procedures), the Senate Staff Affairs Committee has been charged with reviewing Appendix B (Staff Sexual Misconduct Investigation & Adjudication Procedures), and the Senate

Faculty Affairs Committee has been charged with reviewing Appendix C (Faculty Sexual Misconduct Investigation & Adjudication Procedures). These reviews are ongoing; all three committees have deadlines of November 2015.

COMMITTEE WORK

The EDI Committee worked on this charge throughout the 2014-2015 academic year. The committee noted minor changes between the interim policy and the University policy established in fall 2013, as well as between the interim policy and the USM policy established in June 2014.

The committee noted that the main differences that exist between the University's interim policy and the USM policy occur within the section on Prohibited Conduct. The interim policy's definition of sexual assault differs from the USM definition of sexual assault in that it only includes what USM defines as sexual assault I; it does not include what USM defines as sexual assault II:

- *USM Definition of Sexual Assault I. – Non-Consensual Sexual Intercourse*
Any act of sexual intercourse with another individual without Consent. Sexual intercourse includes vaginal or anal penetration, however slight, with any body part or object, or oral penetration involving mouth to genital contact.
- *USM Definition Sexual Assault II. – Non-Consensual Sexual Contact*
Any intentional touching of the intimate parts of another person, causing another to touch one's intimate parts, or disrobing or exposure of another without Consent. Intimate parts may include genitalia, groin, breast, or buttocks, or clothing covering them, or any other body part that is touched in a sexual manner. Sexual contact also includes attempted sexual intercourse.

Rather, the University's interim policy currently separates the actions defined in the USM policy as sexual assault II from the overall USM definition of sexual assault and defines them as "sexual contact." Thus, sexual contact takes the place of sexual assault II:

- *UMD Definition of "Sexual Assault" (Non-consensual sexual intercourse or oral sex)*
means any act of sexual penetration with another individual without consent. Sexual penetration includes vaginal or anal penetration, however slight, with any body part or object, or oral penetration involving mouth to genital contact.
- *UMD Definition of "Sexual Contact" (Non-consensual sexual contact)*
means any unwanted intentional touching of the intimate body parts of another person or yourself; causing another to touch your intimate body parts; or the disrobing or exposure of another without consent. Intimate parts may include genitalia, groin, breast, or buttocks, or clothing covering them, or any other body part (including your own) that is touched in a sexual manner. Unwanted sexual contact includes attempted sexual intercourse.

The EDI Committee consulted with the Title IX Officer & Director of the Office of Civil Rights and Sexual Misconduct (OSM) about the development of the interim policy and the re-wording of the prohibited conduct definitions. The Director of OSM explained to the committee that the overall policy document was re-organized to increase access, readability, and logical flow of the material. In addition, a section on training was added to broadly address the University's prevention and education efforts. The scope of the policy was also revised to further clarify that

the policy includes University-sponsored programs and activities regardless of location. The committee learned that a section on sanctions had been added to the policy, and a list of confidential resources was expanded to clarify where individuals may seek confidential assistance. Also, the revised policy clarifies the types of accommodations and interim protective measures available for students and employees, and it includes information about government agencies that address complaints of sexual misconduct.

Throughout its review, the EDI Committee thoroughly considered the following important topics:

❖ *Title IX and The Reauthorization of the Violence Against Women Act (VAWA)*

Title IX of the Education Amendments of 1972 protects against discrimination based on sex in education programs or activities, which receive Federal financial assistance. Title IX states that:

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 United States Department of Education (DOE) maintains an Office for Civil Rights (OCR), with 12 enforcement offices throughout the nation and a headquarters office in Washington, D.C., to enforce Title IX.

In April 2011, the OCR issued a “Dear Colleague” guidance letter clarifying certain requirements and recommending best practices with respect to Title IX compliance as it relates to university response and prevention of sexual misconduct. In reauthorizing VAWA, Congress also imposed additional requirements regarding sexual misconduct protocols on university campuses, which took effect in spring 2014 (see Appendix 3 for a summary of the additional requirements).

❖ *Guidance from the White House Task Force to Protect Students from Sexual Assault*

In spring 2014, the White House established a Task Force to Protect Students from Sexual Assault. This White House Task Force provided universities with a checklist for sexual misconduct policies, which included guidance on the key elements that universities should consider when crafting such policies and procedures (see Appendix 4 for the checklist). In addition, the White House Task Force supplied sample language and definitions of prohibited conduct for sexual misconduct policies at institutions in the U.S. (see Appendix 5 for the sample language and definitions).

In addition to the guidance from the White House Task Force, the EDI Committee also reviewed the definition of sexual assault as described by the Office on Violence Against Women in the United States Department of Justice (DOJ). The DOJ website defines sexual assault as “any type of sexual contact or behavior that occurs without the explicit consent of the recipient.” It goes on to explain, “Falling under the definition of sexual assault are sexual activities as forced sexual intercourse, forcible sodomy, child molestation, incest, fondling, and attempted rape” (see Appendix 6 for a DOJ website screen capture).

❖ *Peer Institution Research from the Big Ten and USM Schools*

The EDI Committee researched sexual misconduct policies at aspirational peers and peer institutions in the Big Ten. In particular, the committee examined the prohibited conduct

definitions used in peer policies for sexual assault and sexual contact. While a variety of definitions of sexual assault are used at peer institutions across the U.S., many, if not most, of these universities provide a definition of assault that includes, rather than distinguished from, sexual contact. Some universities do not elaborate on the nature of forced or coerced sexual activity that encompasses assault. Some universities do provide separate definitions of sexual assault and sexual contact; in most of these cases, however, the definitions are provided only to clarify the wide scope of sexual assault, rather than distinguishing between various misconduct violation categories.

In addition, the committee reviewed policies at other USM institutions in order to analyze the various definitions of prohibited conduct included in their policies. The committee found that the majority of USM institutions adopt the system policy definitions and categories of prohibited conduct practically verbatim (e.g., they include the two subcategories of sexual assault I and sexual assault II as the definition of sexual assault). At least one system institution includes a third point in the definition of sexual assault to state, "Sexual Assault also includes any offense that meets the definition of rape, fondling, incest or statutory rape as used by the Federal Bureau of Investigation's Uniform Crime Reporting Program" (see Appendix 7 for a summary of peer institution research).

❖ *Feedback from EDI-sponsored Town Hall Meetings and Student-led Change.org Petition*

During spring 2015, the EDI Committee hosted two open Town Hall meetings to gather feedback from the campus community about the interim policy. The Town Halls drew a total of about 60 attendees over the two events; faculty, staff, students, and administrators attended the events. The extensive input and comments gathered at the Town Hall meetings were useful to the committee. Many of the issues raised at the Town Halls included concerns that the committee was already aware of and had previously discussed, particularly concerns regarding the definitions of sexual assault and sexual contact in the interim policy. However, observations were also raised about the need to ensure that the language used in such definitions is inclusive and covers all possible circumstances of sexual abuse (e.g., male on female sexual assault, female on male sexual assault, female on female sexual assault, and male on male sexual assault). For instance, many participants at the Town Hall events were displeased with the word "penetration" being used to define sexual assault (non-consensual sexual intercourse or oral sex). In addition, many attendees were frustrated that the word "rape" is not included or defined anywhere in the interim policy. Further, the EDI Committee received an Open Letter from a group of students following the Town Hall events, stating that many students oppose the use of the terminology of sexual assault and sexual contact in the interim policy; the letter stated that the use of these phrases, with their attached definitions, trivialize the experience of victims.

In addition, following the establishment of the interim policy, a University student created a petition on www.change.org highlighting concerns about the definition of sexual contact in the interim policy and suggesting that the language be reverted to sexual assault II. The text of the petition was made available to the committee for its consideration. As of this report, the petition received 1,375 signatures.

❖ *Resolutions from the Student Government Association (SGA) and the Graduate Student Government (GSG)*

In fall 2014, the Graduate Student Government (GSG) passed a resolution titled, "A Resolution Requesting Changes to the University of Maryland Sexual Misconduct Policy." In the resolution, the GSG encouraged the University to change the interim policy to consider both non-

consensual sexual intercourse and non-consensual sexual contact as distinct forms of sexual assault. Likewise, in spring 2015, the Student Government Association (SGA) passed a resolution titled, “An Act Recommending Changes to the University of Maryland Interim Sexual Misconduct Policy,” in which the SGA recommended expanding the definition of sexual assault in the interim policy to include unwanted intentional touching and attempted sexual intercourse. The SGA also recommended in its resolution that the term sexual contact be changed to sexual offenses (see Appendix 8 for the GSG and SGA resolutions).

OVERALL FINDINGS

Throughout the review of this notable charge, the EDI Committee became keenly aware of the desire amongst campus constituents to edit the definitions of sexual assault and sexual contact in the interim University policy, in order to more closely align with those included in the USM policy and elsewhere. In addition, the committee gathered and examined suggested policy language and definitions from a vast number of entities, including the White House Task Force to Protect Students from Sexual Assault, and the committee determined that changes to the definitions of some of the items under Prohibited Conduct in the interim policy would be in the best interest of the University, the student body, and the campus community. In addition, the committee carefully reviewed the policy page-by-page, and identified areas where minor and technical changes were needed, either to further align with the USM policy or to clarify wording for the reader. The committee consulted with the Director of OSM and the Office of General Counsel in developing its recommendations. The committee is confident that the policy, as edited, will help to reinforce the University’s commitment to a working and learning environment that is free from sexual misconduct.

RECOMMENDATIONS

Based on the EDI Committee’s comprehensive research and discussions, the committee recommends a number of edits to the University of Maryland Sexual Misconduct Policy (VI-1.60[A]), as indicated in the policy document immediately following this report. The EDI Committee approved these recommended edits to the policy on March 26, 2015 and recommends that the edited document become official University policy.

APPENDICES

Appendix 1 – Charge from the Senate Executive Committee (SEC)

Appendix 2 – University System of Maryland (USM) Policy on Sexual Misconduct (VI-1.60)

Appendix 3 – New Requirements Imposed by the Violence Against Women Reauthorization Act

Appendix 4 – White House Task Force Checklist for Campus Sexual Misconduct Policies

Appendix 5 – White House Task Force Sample Language and Definitions of Prohibited Conduct

Appendix 6 – DOJ Website Screen Capture “What is Sexual Assault?”

Appendix 7 – Peer and USM Institution Research

Appendix 8 – Graduate Student Government and Student Government Association Resolutions

Recommended Changes to the VI-1.60(A) University of Maryland Sexual Misconduct Policy
New Text in Blue/Bold (**example**); Removed Text in Red/Strikethrough (~~example~~)

VI-1.60(A) UNIVERSITY OF MARYLAND SEXUAL MISCONDUCT POLICY & PROCEDURES (Approved on an Interim Basis by the President October 13, 2014)

- I. Policy Statement
- II. Applicability
- III. Definitions
- IV. Prohibited Conduct
- V. Sanctions
- VI. Confidential Resources
- VII. Reporting Sexual Misconduct
- VIII. Interim **Protective** Measures
- IX. Retaliation
- X. Complaint Procedures
- XI. Steps to Take Following a Sexual Assault
- XII. Campus Safety
- XIII. Consensual Relationships and Professional Conduct
- XIV. Government Agencies That Address Complaints of Sexual Misconduct

I. -POLICY STATEMENT

Sexual misconduct is a form of sex discrimination prohibited by federal and state discrimination laws, including Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act. In addition, some forms of sexual misconduct violate the criminal laws of the State of Maryland. Sexual misconduct is also a form of sex discrimination in violation of the University of Maryland Code ~~of~~ on Equity, Diversity, and Inclusion (“Code”) <http://www.president.umd.edu/policies/vi100b.html>. However, this policy supersedes and replaces the Code with respect to matters of sexual misconduct. The University will respond to complaints of sexual misconduct in accordance with the provisions of the Sexual Misconduct Policy and accompanying investigation and adjudication procedures.

The Office of **Civil Rights &** Sexual Misconduct (**OSM**) ~~& Relationship Violence~~ shall receive notice of all reports of sexual misconduct received by any individual deemed a “Responsible University Employee” under this policy. No employee (other than law enforcement) is authorized to investigate or resolve reports of sexual misconduct without the involvement of the Title IX Officer:

Catherine A. Carroll, Director

Title IX Officer

Office of **Civil Rights &** Sexual Misconduct ~~& Relationship Violence~~

University of Maryland

1103 Reckord Armory, College Park, MD 20742-5031

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http://www.umd.edu/Sexual_Misconduct

Training

The Office of **Civil Rights & Sexual Misconduct** ~~& Relationship Violence~~ is responsible for overseeing the University's training and educational programs related to sexual misconduct. To learn more about various resources, on-going training initiatives, and education programs for students, faculty and staff, please consult the office's website for more current and up-to-date information.

The University of Maryland is committed to a working and learning environment free from sexual misconduct. Sexual misconduct is a broad term used to describe a range of behavior, including sexual harassment, sexual assault, domestic violence, dating violence, **sexual violence**, relationship violence, sexual exploitation, sexual intimidation, and stalking. Sexual misconduct will not be tolerated. It corrupts the integrity of the educational process and work environment, and violates the core mission and values of the University.

Creating an environment free from sexual misconduct is the responsibility of all members of the University community. The University is committed to fostering a campus climate free from sexual misconduct through training, education and prevention programs, and through policies and procedures that promote prompt reporting, prohibit retaliation, and promote timely, fair and impartial investigation and resolution of sexual misconduct cases. In responding to complaints of sexual misconduct, the University will take appropriate steps to eliminate sexual misconduct, prevent its recurrence and address its effects.

II. -APPLICABILITY

This policy applies to all members of the University community, including students, faculty, and staff. It also applies to contractors and other third parties within the University's control.

This policy applies to sexual misconduct:

- On University premises, in any University facility or on University property;
- At any University sponsored, recognized or approved program, visit or activity, regardless of location;
- That impedes equal access to any University education program or activity or that adversely impacts the education or employment of a member of the University community regardless of where the conduct occurred; or
- That otherwise threatens the health and/or safety of a member of the University community.

III. DEFINITIONS

“Coercion” Includes conduct, intimidation, and express or implied threats of physical or emotional harm, that would reasonably place an individual in fear of immediate or future harm and that is employed to persuade or compel someone to engage in sexual contact. - Examples of Coercion include causing the deliberate Incapacitation of another person; conditioning an academic benefit or

employment advantage on submission to the sexual contact; threatening to harm oneself if the other party does not engage in sexual contact; or threatening to disclose an individual's sexual orientation, gender identity, gender expression, or other personal sensitive information if the other party does not engage in the sexual contact.

“Complainant” refers to the individual who files a sexual misconduct complaint, alleging a violation of this Policy.

“Confidential” refers to communications between two parties where one party, based on their professional status, has the ability to ensure the communications between the two parties are legally protected as private.

“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 he/she has consent from the other party, and that the other party is capable of providing consent.

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

It is a violation of this policy to engage in sexual activity with someone you know, or should know, is incapacitated. Incapacitated, for purposes of this policy, means that the person's decision-making ability is impaired such that they lack the capacity to understand the “who, what, where, why or how” of their sexual interaction. Incapacitation may result from: sleep or unconsciousness, temporary or permanent mental or physical disability, involuntary physical restraint, or the influence of alcohol, drugs, medication, or other substances used to facilitate sexual misconduct.

“Incapacitated” An individual who is Incapacitated is unable to give Consent to sexual contact. States of Incapacitation include sleep, unconsciousness, intermittent consciousness, or any other state

where the individual is unaware that Sexual Contact is occurring. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to Consent to Sexual Contact. Alcohol or drug use is one of the prime causes of Incapacitation. Where alcohol or drug use is involved, Incapacitation is a state beyond intoxication, impairment in judgment, or “drunkenness.” Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is Incapacitated, and therefore unable to give Consent, requires an assessment of whether the consumption of alcohol or other drugs has rendered the individual physically helpless or substantially incapable of:

- Making decisions about the potential consequences of Sexual Contact;
- Appraising the nature of one’s own conduct;
- Communicating Consent to Sexual Contact; or
- Communicating unwillingness to engage in Sexual Contact.

“**Interim Protective Measures**” means reasonably available steps the University may take to protect the parties pending a University investigation and adjudication of sexual misconduct.

“**Respondent**” means the individual accused of engaging in Prohibited Conduct under this Policy.

“**Responsible University Employee**” includes any University administrator, supervisor, faculty member, campus police, coach, **athletic** trainer, resident assistant, or non-confidential first responder who has the authority to take action to redress sexual misconduct; or whom a student could reasonably believe has such authority or duty.

“**Title IX Officer**” refers to the individual designated by the President of the University to: 1) oversee the University’s response to sexual misconduct reports and complaints and identify and address any patterns or systemic problems revealed by such reports and complaints; 2) conduct sexual misconduct investigations; 3) oversee, review content, and, in collaboration with other University offices, conduct training for students, faculty, and staff on sexual misconduct issues; 4) ensure that appropriate policies and procedures are in place for responding to complaints of sexual misconduct against faculty, staff, and students; and 5) work with local law enforcement to ensure coordinated responses to sexual misconduct cases.

IV. PROHIBITED CONDUCT

“**Dating Violence**” encompasses a broad range of behaviors, including sexual assault, physical abuse and other forms of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant, considering the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved.

“Domestic Violence” encompasses a broad range of behaviors, including sexual assault, physical abuse and other forms 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, or by any other person against an adult or youth complainant protected from those acts by domestic or family violence laws of Maryland.

“Relationship Violence” encompasses a broad range of behaviors, including sexual assault, physical abuse and other acts, threats or a pattern of abusive behavior of a physical or sexual nature by one partner intended to control, intimidate, manipulate, humiliate, frighten, coerce, or injure the other. These acts may be directed toward a spouse, an ex-spouse (also referred to as “domestic violence”), or by a current or former intimate partner (“also referred to as “dating violence”).

“Retaliation” means intimidating, threatening, coercing, or discriminating against an individual for the purpose of interfering with any right or privilege secured by law or University policy relating to sexual misconduct, or because an individual has made a report, filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding related to sexual misconduct. Retaliation includes retaliatory harassment.

“Sexual Assault” is any type of actual or attempted sexual contact with another individual without that person’s consent, including sexual intercourse (rape) and attempted sexual intercourse (attempted rape).

Sexual Assault I. – Non-Consensual Sexual Intercourse

Any act of sexual intercourse with another individual without consent (rape). This includes penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person’s consent.

Sexual Assault II. – Non-Consensual Sexual Contact

Any unwanted intentional touching of the intimate body parts of another person, causing another to touch the intimate parts of oneself or another, or disrobing or exposure of another without consent. Intimate parts may include genitalia, groin, breast, or buttocks, or clothing covering them, or any other body part (including one’s own) that is touched in a sexual manner. Non-consensual sexual contact includes attempted sexual intercourse without consent (attempted rape).

~~**“Sexual Assault” (Non-consensual sexual intercourse or oral sex) means any act of sexual penetration with another individual without consent. Sexual penetration includes vaginal or anal penetration, however slight, with any body part or object, or oral penetration involving mouth to genital contact.**~~

~~“Sexual Contact” (Non-consensual sexual contact) means any unwanted intentional touching of the intimate body parts of another person or yourself; causing another to touch your intimate body parts; or the disrobing or exposure of another without consent. Intimate parts may include genitalia, groin, breast, or buttocks, or clothing covering them, or any other body part (including your own) that is touched in a sexual manner. Unwanted sexual contact includes attempted sexual intercourse.~~

“Sexual Exploitation” means 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.

“Sexual Harassment” means: (a) unwelcome sexual advances; (b) unwelcome requests for sexual favors; or (c) other behavior of a sexual or gender-based nature where: (i) submission to **or rejection of** 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; (ii) 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 (iii) 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.

“Sexual Intimidation” means threatening behavior of a sexual nature directed at another person, such as threatening to sexually assault another person or engaging in indecent exposure.

“Sexual Misconduct” is an umbrella term that encompasses dating violence, domestic violence, **sexual violence**, sexual harassment, sexual assault, ~~sexual contact~~, sexual exploitation, sexual intimidation, relationship violence, and stalking. Sexual misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct 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.

“Sexual Violence” means physical sexual acts perpetrated without consent. Sexual violence includes but is not limited to sexual harassment, sexual coercion, **and** sexual assault ~~and sexual contact~~.

“Stalking” means repeated, unwanted attention; physical, verbal, or electronic contact; or any other course of conduct directed at an individual that is sufficiently serious to cause physical, emotional, or psychological fear or to create a hostile, intimidating, or abusive environment for a reasonable person in similar circumstances and with similar identities. Stalking may involve individuals who are known to one another or who have a current or previous relationship or may involve individuals who are strangers.

V. -SANCTIONS

Both parties shall be informed of the outcome of any investigative and adjudicative process based on a violation of this policy. The University shall not publically disclose personally identifiable information about either of the parties, except as required by law.

Employees. Employees found in violation of this policy are subject to disciplinary action ranging from a written reprimand up to and including termination of employment, depending on the circumstances.

Students. Students found in violation of this policy are subject to disciplinary action based on the circumstances and nature of the violation. Sanctions include, but are not limited to: dismissal from the University (suspension or expulsion), removal from University housing, disciplinary probation, and other sanctions such as a community service and mandatory and continuing participation in sexual misconduct education programming.

Persons who commit sexual misconduct in violation of federal, state, or local law may also be subject to criminal charges and penalties.

VI. -CONFIDENTIAL RESOURCES

Generally, it is not confidential when a person reports sexual misconduct. If a person desires to keep an incident of sexual misconduct confidential, they should speak with individuals who have professional or legal obligations to keep communications confidential. When seeking advice and support, persons should always consider whether they want to discuss their concerns with a confidential resource. Unless there is an imminent threat to health or safety or other basis for disclosure, such as child abuse, confidentiality applies when persons seek services from the following resources:

Campus Advocates Respond and Educate (CARE) to Stop Violence

University Health Center Office 301-314-2222

24/7 Help Line (call/text) 301-741-3442

www.health.umd.edu/care or ~~OR~~ care@health.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 sexual misconduct. Its mission is to respond to incidents of sexual misconduct, including sexual assault, relationship violence, stalking, and sexual harassment.

Faculty Staff Assistance Program (FSAP) 301-314-8170 or 301-314-8099

This program is a confidential assessment, referral, and counseling service staffed by trained mental health professionals. FSAP is available to all University of Maryland, ~~College Park,~~

employees and their family members at no charge. Faculty and staff may consult with a counselor for many different reasons, including sexual misconduct.

University Counseling Center 301-314-7651

www.counseling.umd.edu

The University of Maryland Counseling Center provides comprehensive psychological and counseling services to meet the mental health and developmental needs of students and others in the campus 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, Mental Health Service 301-314-8106

www.health.umd.edu/mentalhealth/services

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

Student Legal Aid Office

Undergraduates 301-314-7756; Graduates ~~Students~~ 301-405-5807

~~This office~~ **The Student Legal Aid Office**, located in South Campus Dining Hall, provides free, confidential legal advice to any University student.

Campus Chaplains 301-405-8450/ or 301-314-9866

http://thestamp.umd.edu/engagement/memorial_chapel/chaplains

The Campus Chaplains represent 14 faith communities and work collectively to serve the spiritual needs of all members of the University community.

Prince George's Hospital Domestic Violence and Sexual Assault Center

301-618-3154 - 24 hours (3001 Hospital Drive, Cheverly, MD 20785)

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 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 help line 1-800-983-RAPE

MCASA is a statewide coalition of 17 rape crisis and recovery centers that serve all of Maryland's 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

1-800-MD-HELPS

The Maryland Network Against Domestic Violence 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.

Disclosures or reports made to any other entities except those listed above are *not* confidential. **For instance, if** you discuss an incident of sexual misconduct with your supervisor, a resident assistant, a coach, or faculty member, those persons are “Responsible University Employees” and, as such, are obligated pursuant to this policy to report the sexual misconduct to the Title IX Officer.

The University recognizes that sexual misconduct is a sensitive issue for all parties involved and is committed to operating with discretion, and maintaining the privacy of individuals to the greatest extent possible under applicable law.

VII. -REPORTING SEXUAL MISCONDUCT

Obligations of “Responsible University Employee.” A “Responsible University Employee” (see definitions) must promptly notify the Title IX Officer in the Office of **Civil Rights & Sexual Misconduct** ~~& Relationship Violence~~ of any report of sexual misconduct brought to their attention, including campus law enforcement. The Title IX Officer works collaboratively with the reporting entity, making every effort to operate with discretion and maintain the privacy of the individuals involved.

Prompt reporting is encouraged. Persons are encouraged to report sexual misconduct promptly in order to maximize 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 sexual misconduct, 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.

All reports of sexual misconduct will be responded to immediately and appropriate action will be taken in accordance with the University’s Sexual Misconduct Investigation & Adjudication Procedures (see *Appendices A, B, C*). If the University determines that sexual misconduct has occurred, it will take prompt and effective steps to eliminate the sexual misconduct, prevent its recurrence, and address its effects.

The University strives to take appropriate action, including investigation and resolution of complaints within sixty (60) **business calendar** days from when the complaint was filed. The University may

extend the time frames set forth in this policy for good cause, with written notice to both parties of the delay and the reason for the delay. Exceptions to this timeframe may vary depending on the complexity of the investigation, access to relevant parties, and the severity and extent of the misconduct.

Sexual misconduct by students, faculty, staff, and third parties should be reported to:

Office of Civil Rights & Sexual Misconduct & Relationship Violence 301-405-1142

www.umd.sexual_misconduct | titleixcoordinator@umd.edu

The mission of the Office of **Civil Rights & Sexual Misconduct & Relationship Violence** is to support the University's commitment to a working and learning environment free from sexual misconduct and relationship violence. The core services of the Office include: oversight for all institutional responses to sexual misconduct and relationship violence, ensuring University compliance with federal statutory and regulatory requirements, promoting best practices in responding to victims of sexual violence and holding respondents accountable, receiving and investigating reports of sexual misconduct and relationship violence, and increasing access to information and available resources to the campus community. The office seeks to work collaboratively across all campus constituent groups and create a climate where diversity, inclusion, and respect inform all processes.

Sexual misconduct committed by students may also be reported to:

Office of Student Conduct, Division of Student Affairs -301-314-8204

www.studentconduct.umd.edu | studentconduct@umd.edu

The Office of Student Conduct administers adjudicative processes involving students who commit violations of the University of **Maryland** Code of Student Conduct, and can provide assistance to students who wish to report incidents of sexual misconduct.

Office of Rights and Responsibilities, Department of Resident Life 301-314-7598

www.reslife.umd.edu/rights | drl-rr@umd.edu

The Office of Rights and Responsibilities administers adjudicative processes involving students who commit conduct violations of the Residence Hall Rules and the University of **Maryland** Code of Student Conduct in on-campus residence halls, and can provide assistance to students who wish to report incidents of sexual misconduct.

Reporting a crime. Sexual misconduct, particularly sexual violence, may be a crime. The University will assist complainants who wish to report sexual misconduct to law enforcement authorities, including campus police. Representatives of the Office of **Civil Rights & Sexual Misconduct & Relationship Violence**, Office of Student Conduct, Office of Rights & Responsibilities, and Campus Advocates Respond and Educate (CARE) to Stop Violence Office in the University Health Center, are available to assist students in reporting to campus police. Campus police will also assist complainants in notifying other law enforcement authorities in other

jurisdictions, as appropriate. To report to the University of Maryland Police, please call 301-405-3555.

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 misconduct and related internal University processes may occur prior to, concurrent with, or following criminal proceedings off campus.

Upon receipt of a report of sexual misconduct that may constitute a crime, campus police will advise the student that in addition to making a criminal report, they also have the right to file a complaint with the University and engage the University's investigation and adjudicative processes under this policy. In addition, as Responsible University Employees under this policy, campus police who receive any type of report of sexual misconduct, whether it rises to the level of a crime or not, shall promptly notify the Title IX Officer at titleixcoordinator@umd.edu.

Co-Occurring Criminal Action. Proceeding with a University investigation and adjudication of a complaint of sexual misconduct under this policy is independent of any criminal investigation or proceeding. Reporting to law enforcement does not preclude a person from proceeding with a complaint of sexual misconduct 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 interim protective 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, ~~UMPD~~-**University of Maryland Police** 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~~-**University of Maryland Police**, Prince George's County Police, or the local prosecutor's office, the Office of **Civil Rights & Sexual Misconduct** will work collaboratively and supportively with each respective agency within the parameters outlined above. The Office of **Civil Rights & Sexual Misconduct** will communicate any necessary delays in the University's investigative process to both parties in the event of a deferral.

The Office of **Civil Rights & Sexual Misconduct** shall not disclose information about sexual misconduct complaints to third parties (persons other than those in the University community with a need to know) except as may be required or permitted by federal or state law. If a report of sexual misconduct discloses a serious and on-going threat to the campus community, the ~~UMPD~~-**University of Maryland Police** may issue a timely warning of the conduct under the Clery Act in the interests of the health and safety of the campus community. This notice will not contain any personally identifying information related to the complainant.

Amnesty for Students Who Report Sexual Misconduct

The University recognizes that a student who is under the influence of alcohol and/or drugs at the time of an incident may be hesitant to make a report of sexual misconduct because of the threat of disciplinary sanctions for his or her own violation of the **University of Maryland** Code of Student Conduct (i.e., alcohol or drug use violation). In this context, a student who reports sexual misconduct, either as a complainant or third party witness, will not face disciplinary charges under the **University of Maryland** Code of Student Conduct in accordance with *V-1.00(J) University of Maryland Policy on Promoting Responsible Action in Medical Emergencies* at <http://www.president.umd.edu/policies/v100jnew.html>

Requests for Confidentiality

If a complainant requests that their name not be disclosed or that the University not investigate or take action against the respondent, the Title IX Officer or designee will determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, faculty, and staff, including the complainant. The Title IX Officer shall make a determination as to whether the complainant's request can be honored, by considering the following factors:

- Circumstances that suggest there is an increased risk of the respondent committing additional acts of sexual misconduct or other violence (e.g., whether there have been other sexual misconduct complaints about the same respondent);
- Whether the respondent has any documented history of violence known to the University;
- Whether the respondent threatened further sexual misconduct or other violence against the complainant or others that is known to the University;
- Whether the sexual misconduct was committed by multiple persons;
- Whether the sexual misconduct was perpetrated with a weapon;
- The age of the complainant subjected to the sexual misconduct; and
- Whether the ~~school~~ **University** possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

VIII. ~~PROTECTIVE~~ INTERIM PROTECTIVE MEASURES

Reports of sexual misconduct in violation of this policy may require immediate protective measures to protect the safety and well-being of the parties and/or the campus community pending the outcome of the investigative and adjudicative processes. Interim protective measures may include the following:

No Contact Order. A no contact order is an official University directive that serves as notice to an individual that they must not have verbal, electronic, written, or third party communications with another individual.

For Students:

- *Academic accommodations*, such as, assistance in transferring to another section of a lecture or laboratory, assistance in arranging for incompletes, leaves or withdrawal from campus, or rearranging class schedules, and
- *Housing accommodations*, such as, facilitating changes in on-campus housing location to alternate housing, assistance in exploring alternative housing off-campus, and
- *Employment accommodations*, such as, arranging for alternate University employment, different work shifts, etc., **and**
- *Transportation and parking accommodations*.

For Employees:

- *Employment accommodations*, ~~both the complainant and the respondent may request a such as~~, temporary reassignment, if appropriate, to other work duties and responsibilities, or other work locations, or other work groups/teams or alternative supervision/management-, **and**
- *Transportation and parking accommodations*.

IX. -RETALIATION

Complaints of Retaliation. Individuals who engage in retaliatory behavior against a reporting party or party participating in an investigation, are in violation of this policy, and will be subject to appropriate disciplinary action pursuant to the procedures for this policy. Individuals who believe they have experienced retaliation in violation of this policy should immediately report such conduct to the Title IX Officer at titleixcoordinator@umd.edu.

X. COMPLAINT PROCEDURES

Complaints Against Students. Complaints against students based on a violation of this policy will be reviewed in accordance with the procedures set forth in *Appendix A*.

Complaints Against Staff. Complaints against staff based on a violation of this policy will be reviewed in accordance with the procedures set forth in *Appendix B*. ~~(to be finalized by December 31, 2014)~~

Complaints Against Faculty. Complaints against faculty members based on a violation of this policy will be reviewed in accordance with the procedures set forth in *Appendix C*. ~~(to be finalized by December 31, 2014)~~.

Complaints Against Third Parties Not Affiliated With the University. If a member of the University community (student, faculty, or staff) is subjected to sexual misconduct by a third party not affiliated with the University on University premises or during University sponsored activities,

the matter should be reported to the Title IX Officer. The matter may be referred to law enforcement with a request that a formal letter be issued to the third party denying access to the University's buildings or grounds for acting in a manner that disrupts or disturbs the normal educational functions of the institution. The University is authorized to deny campus access to a third party engaged in disruptive behaviors under Maryland State law (see Sections 26-101 and 26-102, Education Article, Annotated Code of Maryland).

XI. -STEPS TO TAKE FOLLOWING A SEXUAL ASSAULT

Stay Warm. Persons who experience sexual assault may be in a state of shock. It is important to stay warm by wrapping up in a blanket or coat. This will help recovery from shock and make it less likely that physical evidence is disturbed.

Get to a Safe Place and Seek Emotional Support. Talking with a trusted friend or relative or someone who is professionally trained to deal with sexual assault like a confidential CARE advocate or mental health professional at the University Health Center can help you make decisions about what to do. Whether you decide to go to law enforcement or not, it is important to take care of your own emotional needs. Professional counseling may be beneficial.

Preserve Evidence. If possible, consider taking steps to preserve physical evidence - on the body and at the location of an assault. It is important not to shower or bathe, eat or drink, brush teeth or gargle, change clothes, urinate or defecate, brush or comb hair, or smoke. Clothing worn at the time of an assault should not be washed but placed in a paper bag "as is" and brought to the hospital. In order to avoid forgetting important details, write down the facts about the accused and the assault.

Seek Medical Attention. It is important to seek medical attention as soon as possible. A medical examination will ensure appropriate medical treatment, including testing for pregnancy or sexually transmitted infections. You may also want to obtain a Sexual Assault Forensic Exam (SAFE). A SAFE exam allows for the collection of evidence and can ensure any physical evidence is preserved in the event of a report to law enforcement. A SAFE exam may be obtained within 72 hours after an assault at:

Prince George's Hospital Domestic Violence and Sexual Assault Center (DV/SAC)

(301-618-3154)

<http://www.dimensionshealth.org/index.php/dimensions-healthcare-facilities/prince-georges-hospital-center/domestic-violence-and-sexual-assault-center-dvsac/>

XII. CAMPUS SAFETY

The health and safety of all members of the campus community are the University's primary concern. The University makes the following services available:

Emergency Phones

University of Maryland Police Emergency Response Telephones (PERT), recognized by a blue light affixed to each station, are available throughout campus. By activating the phone, an individual will be automatically connected to a cCampus pPolice dDispatcher who is immediately alerted to the location of the phone.

24 Hour Walking Escorts Service/Student Police Auxiliary Foot Patrol

301-405-33333555 or blue light emergency PERT phone

The University of Maryland Police Department provides a walking escort service 24 hours a day for anyone who feels unsafe while walking on campus. ~~A University Police Officer provides by either the Student Auxiliary Police Aide, or walking escorts.~~ The walking escorts are conducted by the Student Police Auxiliary foot patrol program. University of Maryland Police officers will provide walking escorts when the foot patrol program is out of service or if requested and available.

University Department of Public Safety

301-405-3555 (non-emergency) or 301-405-3333 (emergency)

Local Police in ANY location - 911

Persons who experience sexual misconduct are strongly encouraged to contact the University's of Maryland Police. If a person is not certain whether criminal conduct is involved, an officer can assist in determining whether a crime has occurred. If sexual misconduct occurred off campus, an officer can assist in contacting the appropriate law enforcement agency. A student can request and receive the assistance of campus police without making a criminal complaint. Campus police can also assist in accompanying the student to a hospital that can provide a Sexual Assault Forensic Exam (SAFE) to both ensure appropriate medical treatment and the timely collection of physical evidence in the event the person seeks to make a criminal complaint.

XIII. -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 they have supervisory and/or evaluative responsibilities *must inform their supervisor(s)* of the relationship(s). Supervisory or evaluative responsibilities may be reassigned, as appropriate. While no relationships are expressly prohibited by this policy, failure to self-report such relationships in a timely manner, as required by this policy, may result in disciplinary action.

XIV. -GOVERNMENT AGENCIES THAT ADDRESS COMPLAINTS OF SEXUAL MISCONDUCT

Complaints of sexual misconduct may also be filed with:

Equal Employment Opportunity Commission

City Crescent Building
10 S. Howard Street, Third Floor
Baltimore, MD 21201
Phone: 1-800-669-4000
Fax: 410-962-4270
TTY: 1-800-669-6820
Website: <https://egov.eeoc.gov/eas/>

Maryland Commission on Civil Rights

William Donald Schaefer Tower
6 Saint Paul Street, Ninth Floor
Baltimore, MD 21202-1631
Phone: 410-767-8600
Fax: 410-333-1841
TTY: 410-333-1737
Website: <http://mccr.maryland.gov/>
E-mail: jcole@mccr.state.md.us

It is important to note that in order to protect the legal rights and remedies available to a complainant, a complainant must comply with certain time limits and deadlines. Affected persons should contact the relevant agencies to verify the time limits. Failure to meet required deadlines may result in a loss of rights to seek a legal remedy.

Complaints involving violations of Title IX in the **S**tate of Maryland should be directed to:

Office for Civil Rights

U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Phone: 215-656-8541
Fax: 215-656-8605
TDD: 800-877-8339
E-mail: OCR.Philadelphia@ed.gov
Website: http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html

Replacement for:


VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment

VI-1.30(A) University of Maryland Procedures on Sexual Assault and Misconduct

Appendix 1



**University Senate
CHARGE**

Date:	November 11, 2014
To:	Terry Owen Chair, Equity, Diversity, and Inclusion (EDI) Committee
From:	Donald Webster Chair, University Senate 
Subject:	Review of the Interim University of Maryland Sexual Misconduct Policy
Senate Document #:	14-15-11
Deadline:	March 27, 2015

The Senate Executive Committee (SEC) requests that the Equity, Diversity, and Inclusion (EDI) Committee review the attached interim Sexual Misconduct Policy and make recommendations on whether they are appropriate.

The U.S. Department of Education's Office for Civil Rights (OCR) provided guidance regarding the Violence Against Women Act (VAWA), which was reauthorized in 2013. This guidance required higher education institutions to develop specific sexual misconduct policies and procedures. As a result, the University System of Maryland (USM) revised its Policy on Sexual Misconduct (V-1.60) and asked all USM institutions to align their policies accordingly. The attached interim policy was developed to align our existing policy with VAWA stipulations and the USM policy.

Specifically, we ask that you:

1. Review the interim University of Maryland Sexual Misconduct Policy & Procedures (VI-1.60[A]).
2. Review the overview of changes to the University of Maryland Sexual Misconduct Policy developed by the Office of Sexual Misconduct and Relationship Violence and consult with the University's Title IX Coordinator regarding the development of the interim policy (attached).
3. Review similar policies for sexual misconduct at our peer institutions and other Big 10 institutions.

4. Consider whether the proposed interim policy aligns with the USM Policy and VAWA guidelines.
5. Consult with the University's Office of Legal Affairs on any recommended policy revisions.
6. If appropriate, recommend whether the interim policy should be revised.

We ask that you submit your report and recommendations to the Senate Office no later than March 27, 2015. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, extension 5-5804.

Attachments

DW/rm

VI-1.60(A) UNIVERSITY OF MARYLAND SEXUAL MISCONDUCT POLICY & PROCEDURES

(Approved on an Interim Basis by the President October 13, 2014)

- I. Policy Statement
- II. Applicability
- III. Definitions
- IV. Prohibited Conduct
- V. Sanctions
- VI. Confidential Resources
- VII. Reporting Sexual Misconduct
- VIII. Interim Measures
- IX. Retaliation
- X. Complaint Procedures
- XI. Steps to Take Following a Sexual Assault
- XII. Campus Safety
- XIII. Consensual Relationships and Professional Conduct
- XIV. Government Agencies That Address Complaints of Sexual Misconduct

I. POLICY STATEMENT

Sexual misconduct is a form of sex discrimination prohibited by federal and state discrimination laws, including Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act. In addition, some forms of sexual misconduct violate the criminal laws of the State of Maryland. Sexual misconduct is also a form of sex discrimination in violation of the University of Maryland Code of on Equity, Diversity and Inclusion (“Code”) <http://www.president.umd.edu/policies/vi100b.html>. However, this policy supersedes and replaces the Code with respect to matters of sexual misconduct. The University will respond to complaints of sexual misconduct in accordance with the provisions of the Sexual Misconduct Policy and accompanying investigation and adjudication procedures.

The Office of Sexual Misconduct & Relationship Violence shall receive notice of all reports of sexual misconduct received by any individual deemed a “Responsible University Employee” under this policy. No employee (other than law enforcement) is authorized to investigate or resolve reports of sexual misconduct without the involvement of the Title IX Officer:

Catherine A. Carroll, Director

Title IX Officer

Office of Sexual Misconduct & Relationship Violence

University of Maryland

1103 Reckord Armory, College Park, MD 20742-5031

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

Phone: 301-405-1142 | Cell/Text: 301-852-0946 | Fax: 301-405-2837

http://www.umd.edu/Sexual_Misconduct

Training

The Office of Sexual Misconduct & Relationship Violence is responsible for overseeing the University's training and educational programs related to sexual misconduct. To learn more about various resources, on-going training initiatives, and education programs for students, faculty and staff, please consult the office's website for more current and up-to-date information.

The University of Maryland is committed to a working and learning environment free from sexual misconduct. Sexual misconduct is a broad term used to describe a range of behavior, including sexual harassment, sexual assault, domestic violence, dating violence, relationship violence, sexual exploitation, sexual intimidation and stalking. Sexual misconduct will not be tolerated. It corrupts the integrity of the educational process and work environment, and violates the core mission and values of the University.

Creating an environment free from sexual misconduct is the responsibility of all members of the University community. The University is committed to fostering a campus climate free from sexual misconduct through training, education and prevention programs, and through policies and procedures that promote prompt reporting, prohibit retaliation, and promote timely, fair and impartial investigation and resolution of sexual misconduct cases. In responding to complaints of sexual misconduct, the University will take appropriate steps to eliminate sexual misconduct, prevent its recurrence and address its effects.

II. APPLICABILITY

This policy applies to all members of the University community, including students, faculty and staff. It also applies to contractors and other third parties within the University's control.

This policy applies to sexual misconduct:

- On University premises, in any University facility or on University property;
- At any University sponsored, recognized or approved program, visit or activity, regardless of location;
- That impedes equal access to any University education program or activity or that adversely impacts the education or employment of a member of the University community regardless of where the conduct occurred; or
- That otherwise threatens the health and/or safety of a member of the University community.

III. DEFINITIONS

“Coercion” Includes conduct, intimidation, and express or implied threats of physical or emotional harm, that would reasonably place an individual in fear of immediate or future harm and that is employed to persuade or compel someone to engage in sexual contact.. Examples of Coercion include causing the deliberate Incapacitation of another person; conditioning an academic benefit or

employment advantage on submission to the sexual contact; threatening to harm oneself if the other party does not engage in sexual contact; or threatening to disclose an individual's sexual orientation, gender identity, gender expression, or other personal sensitive information if the other party does not engage in the sexual contact.

“Complainant” refers to the individual who files a sexual misconduct complaint, alleging a violation of this Policy.

“Confidential” refers to communications between two parties where one party, based on their professional status, has the ability to ensure the communications between the two parties are legally protected as private.

“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 he/she has consent from the other party, and that the other party is capable of providing consent.

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

It is a violation of this policy to engage in sexual activity with someone you know, or should know, is incapacitated. Incapacitated, for purposes of this policy, means that the person's decision-making ability is impaired such that they lack the capacity to understand the “who, what, where, why or how” of their sexual interaction. Incapacitation may result from: sleep or unconsciousness, temporary or permanent mental or physical disability, involuntary physical restraint, or the influence of alcohol, drugs, medication or other substances used to facilitate sexual misconduct.

“Incapacitated” An individual who is Incapacitated is unable to give Consent to sexual contact. States of Incapacitation include sleep, unconsciousness, intermittent consciousness, or any other state

where the individual is unaware that Sexual Contact is occurring. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to Consent to Sexual Contact. Alcohol or drug use is one of the prime causes of Incapacitation. Where alcohol or drug use is involved, Incapacitation is a state beyond intoxication, impairment in judgment, or “drunkenness.” Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is Incapacitated, and therefore unable to give Consent, requires an assessment of whether the consumption of alcohol or other drugs has rendered the individual physically helpless or substantially incapable of:

- Making decisions about the potential consequences of Sexual Contact;
- Appraising the nature of one’s own conduct;
- Communicating Consent to Sexual Contact; or
- Communicating unwillingness to engage in Sexual Contact.

“**Interim Protective Measures**” means reasonably available steps the University may take to protect the parties pending a University investigation and adjudication of sexual misconduct.

“**Respondent**” means the individual accused of engaging in Prohibited Conduct under this Policy.

“**Responsible University Employee**” includes any University administrator, supervisor, faculty member, campus police, coach, trainer, resident assistant, or non-confidential first responder who has the authority to take action to redress sexual misconduct; or whom a student could reasonably believe has such authority or duty.

“**Title IX Officer**” refers to the individual designated by the President of the University to: 1) oversee the University’s response to sexual misconduct reports and complaints and identify and address any patterns or systemic problems revealed by such reports and complaints; 2) conduct sexual misconduct investigations; 3) oversee, review content, and, in collaboration with other University offices, conduct training for students, faculty, and staff on sexual misconduct issues; 4) ensure that appropriate policies and procedures are in place for responding to complaints of sexual misconduct against faculty, staff and students; and 5) work with local law enforcement to ensure coordinated responses to sexual misconduct cases.

IV. PROHIBITED CONDUCT

“**Dating Violence**” encompasses a broad range of behaviors, including sexual assault, physical abuse and other forms of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant, considering the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved.

“Domestic Violence” encompasses a broad range of behaviors, including sexual assault, physical abuse and other forms 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, or by any other person against an adult or youth complainant protected from those acts by domestic or family violence laws of Maryland.

“Relationship Violence” encompasses a broad range of behaviors, including sexual assault, physical abuse and other acts, threats or a pattern of abusive behavior of a physical or sexual nature by one partner intended to control, intimidate, manipulate, humiliate, frighten, coerce or injure the other. These acts may be directed toward a spouse, an ex-spouse (also referred to as “domestic violence”), or by a current or former intimate partner (“also referred to as “dating violence”).

“Retaliation” means intimidating, threatening, coercing, or discriminating against an individual for the purpose of interfering with any right or privilege secured by law or University policy relating to sexual misconduct, or because an individual has made a report, filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding related to sexual misconduct. Retaliation includes retaliatory harassment.

“Sexual Assault” (Non-consensual sexual intercourse or oral sex) means any act of sexual penetration with another individual without consent. Sexual penetration includes vaginal or anal penetration, however slight, with any body part or object, or oral penetration involving mouth to genital contact.

“Sexual Contact” (Non-consensual sexual contact) means any unwanted intentional touching of the intimate body parts of another person or yourself; causing another to touch your intimate body parts; or the disrobing or exposure of another without consent. Intimate parts may include genitalia, groin, breast, or buttocks, or clothing covering them, or any other body part (including your own) that is touched in a sexual manner. Unwanted sexual contact includes attempted sexual intercourse.

“Sexual Exploitation” means 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.

“Sexual Harassment” means: (a) unwelcome sexual advances; (b) unwelcome requests for sexual favors; or (c) other behavior of a sexual or gender-based nature where: (i) 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; (ii) 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 (iii) 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.

“Sexual Intimidation” means threatening behavior of a sexual nature directed at another person, such as threatening to sexually assault another person or engaging in indecent exposure.

“Sexual Misconduct” is an umbrella term that encompasses dating violence, domestic violence, sexual harassment, sexual assault, sexual contact, sexual exploitation, sexual intimidation, relationship violence and stalking. Sexual misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct 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.

“Sexual Violence” means physical sexual acts perpetrated without consent. Sexual violence includes but is not limited to sexual harassment, sexual coercion, sexual assault and sexual contact.

“Stalking” means repeated, unwanted attention; physical, verbal, or electronic contact; or any other course of conduct directed at an individual that is sufficiently serious to cause physical, emotional, or psychological fear or to create a hostile, intimidating, or abusive environment for a reasonable person in similar circumstances and with similar identities. Stalking may involve individuals who are known to one another or who have a current or previous relationship or may involve individuals who are strangers.

V. SANCTIONS

Both parties shall be informed of the outcome of any investigative and adjudicative process based on a violation of this policy. The University shall not publically disclose personally identifiable information about either of the parties, except as required by law.

Employees. Employees found in violation of this policy are subject to disciplinary action ranging from a written reprimand up to and including termination of employment, depending on the circumstances.

Students. Students found in violation of this policy are subject to disciplinary action based on the circumstances and nature of the violation. Sanctions include, but are not limited to: dismissal from the University (suspension or expulsion), removal from University housing, disciplinary probation, and other sanctions such as a community service and mandatory and continuing participation in sexual misconduct education programming.

Persons who commit sexual misconduct in violation of federal, state or local law may also be subject to criminal charges and penalties.

VI. CONFIDENTIAL RESOURCES

Generally, it is not confidential when a person reports sexual misconduct. If a person desires to keep an incident of sexual misconduct confidential, they should speak with individuals who have professional or legal obligations to keep communications confidential. When seeking advice and support, persons should always consider whether they want to discuss their concerns with a confidential resource. Unless there is an imminent threat to health or safety or other basis for disclosure, such as child abuse, confidentiality applies when persons seek services from the following resources:

Campus Advocates Respond and Educate (CARE) to Stop Violence

University Health Center Office 301-314-2222

24/7 Help Line (call/text) 301-741-3442

www.health.umd.edu/care OR care@health.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 sexual misconduct. Its mission is to respond to incidents of sexual misconduct, including sexual assault, relationship violence, stalking, and sexual harassment.

Faculty Staff Assistance Program (FSAP) 301-314-8170 or 301-314-8099

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

University Counseling Center 301-314-7651

www.counseling.umd.edu

The University of Maryland Counseling Center provides comprehensive psychological and counseling services to meet the mental health and developmental needs of students and others in the campus 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, Mental Health Service 301-314-8106

www.health.umd.edu/mentalhealth/services

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

Student Legal Aid Office

Undergraduates 301-314-7756; Graduates 301-405-5807

This office, located in South Campus Dining Hall, provides free, confidential legal advice to any University student.

Campus Chaplains 301-405-8450/301-314-9866

http://thestamp.umd.edu/engagement/memorial_chapel/chaplains

The Campus Chaplains represent 14 faith communities and work collectively to serve the spiritual needs of all members of the University community.

Prince George’s Hospital Domestic Violence and Sexual Assault Center

301-618-3154 - 24 hours (3001 Hospital Drive, Cheverly, MD 20785)

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 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 help line 1-800-983-RAPE

MCASA is a statewide coalition of 17 rape crisis and recovery centers that serve all of Maryland’s 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

1-800-MD-HELPS

The Maryland Network Against Domestic Violence 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.

Disclosures or reports made to any other entities except those listed above are *not* confidential. If you discuss an incident of sexual misconduct with your supervisor, a resident assistant, a coach or faculty member, those persons are “Responsible University Employees” and, as such, are obligated pursuant to this policy to report the sexual misconduct to the Title IX Officer.

The University recognizes that sexual misconduct is a sensitive issue for all parties involved and is committed to operating with discretion, and maintaining the privacy of individuals to the greatest extent possible under applicable law.

VII. REPORTING SEXUAL MISCONDUCT

Obligations of “Responsible University Employee.” A “Responsible University Employee” (see definitions) must promptly notify the Title IX Officer in the Office of Sexual Misconduct & Relationship Violence of any report of sexual misconduct brought to their attention, including campus law enforcement. The Title IX Officer works collaboratively with the reporting entity, making every effort to operate with discretion and maintain the privacy of the individuals involved.

Prompt reporting is encouraged. Persons are encouraged to report sexual misconduct promptly in order to maximize 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 sexual misconduct, 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.

All reports of sexual misconduct will be responded to immediately and appropriate action will be taken in accordance with the University’s Sexual Misconduct Investigation & Adjudication Procedures (see *Appendices A, B, C*). If the University determines that sexual misconduct has occurred, it will take prompt and effective steps to eliminate the sexual misconduct, prevent its recurrence and address its effects.

The University strives to take appropriate action, including investigation and resolution of complaints within sixty (60) business days from when the complaint was filed. The University may extend the time frames set forth in this policy for good cause, with written notice to both parties of the delay and the reason for the delay. Exceptions to this timeframe may vary depending on the complexity of the investigation, access to relevant parties, and the severity and extent of the misconduct.

Sexual misconduct by students, faculty, staff and third parties should be reported to:

Office of Sexual Misconduct & Relationship Violence 301-405-1142

www.umd.sexual_misconduct | titleixcoordinator@umd.edu

The mission of the Office of Sexual Misconduct & Relationship Violence is to support the University’s commitment to a working and learning environment free from sexual misconduct and relationship violence. The core services of the Office include: oversight for all institutional responses to sexual misconduct and relationship violence, ensuring University compliance with federal statutory and regulatory requirements, promoting best practices in responding to victims of sexual violence and holding respondents accountable, receiving and investigating reports of sexual misconduct and relationship violence, and increasing access to information and available resources to the campus community. The office seeks to work

collaboratively across all campus constituent groups and create a climate where diversity, inclusion and respect inform all processes.

Sexual misconduct committed by students may also be reported to:

Office of Student Conduct, Division of Student Affairs 301-314-8204

www.studentconduct.umd.edu | studentconduct@umd.edu

The Office of Student Conduct administers adjudicative processes involving students who commit violations of the University Code of Student Conduct, and can provide assistance to students who wish to report incidents of sexual misconduct.

Office of Rights and Responsibilities, Department of Resident Life 301-314-7518

www.reslife.umd.edu/rights | drl-rr@umd.edu

The Office of Rights and Responsibilities administers adjudicative processes involving students who commit conduct violations of the Residence Hall Rules and the University Code of Student Conduct in on-campus residence halls, and can provide assistance to students who wish to report incidents of sexual misconduct.

Reporting a crime. Sexual misconduct, particularly sexual violence, may be a crime. The University will assist complainants who wish to report sexual misconduct to law enforcement authorities, including campus police. Representatives of the Office of Sexual Misconduct & Relationship Violence, Office of Student Conduct, Office of Rights & Responsibilities and Campus Advocates Respond and Educate (CARE) to Stop Violence Office in the University Health Center, are available to assist students in reporting to campus police. Campus police will also assist complainants in notifying other law enforcement authorities in other jurisdictions, as appropriate. To report to the University of Maryland Police, please call 301-405-3555.

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 misconduct and related internal University processes may occur prior to, concurrent with, or following criminal proceedings off campus.

Upon receipt of a report of sexual misconduct that may constitute a crime, campus police will advise the student that in addition to making a criminal report, they also have the right to file a complaint with the University and engage the University's investigation and adjudicative processes under this policy. In addition, as Responsible University Employees under this policy, campus police who receive any type of report of sexual misconduct, whether it rises to the level of a crime or not, shall promptly notify the Title IX Officer at titleixcoordinator@umd.edu.

Co-Occurring Criminal Action. Proceeding with a University investigation and adjudication of a complaint of sexual misconduct under this policy is independent of any criminal investigation or proceeding. Reporting to law enforcement does not preclude a person from proceeding with a complaint of sexual misconduct 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 interim protective 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, 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 Office of Sexual Misconduct will work collaboratively and supportively with each respective agency within the parameters outlined above. The Office of Sexual Misconduct will communicate any necessary delays in the University's investigative process to both parties in the event of a deferral.

The Office of Sexual Misconduct shall not disclose information about sexual misconduct complaints to third parties (persons other than those in the University community with a need to know) except as may be required or permitted by federal or state law. If a report of sexual misconduct discloses a serious and on-going threat to the campus community, the UMPD may issue a timely warning of the conduct under the Clery Act in the interests of the health and safety of the campus community. This notice will not contain any personally identifying information related to the complainant.

Amnesty for Students Who Report Sexual Misconduct

The University recognizes that a student who is under the influence of alcohol and/or drugs at the time of an incident may be hesitant to make a report of sexual misconduct because of the threat of disciplinary sanctions for his or her own violation of the Code of Student Conduct (i.e., alcohol or drug use violation). In this context, a student who reports sexual misconduct, either as a complainant or third party witness, will not face disciplinary charges under the Code of Student Conduct in accordance with *V-1.00(J) University of Maryland Policy on Promoting Responsible Action in Medical Emergencies* at <http://www.president.umd.edu/policies/v100jnew.html>

Requests for Confidentiality

If a complainant requests that their name not be disclosed or that the University not investigate or take action against the respondent, the Title IX Officer or designee will determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, faculty and staff, including the complainant. The Title IX Officer shall make a determination as to whether the complainant's request can be honored, by considering the following factors:

- Circumstances that suggest there is an increased risk of the respondent committing additional acts of sexual misconduct or other violence (e.g., whether there have been other sexual misconduct complaints about the same respondent);
- Whether the respondent has any documented history of violence known to the University;
- Whether the respondent threatened further sexual misconduct or other violence against the complainant or others that is known to the University;
- Whether the sexual misconduct was committed by multiple persons;
- Whether the sexual misconduct was perpetrated with a weapon;
- The age of the complainant subjected to the sexual misconduct; and
- Whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

VIII. PROTECTIVE INTERIM MEASURES

Reports of sexual misconduct in violation of this policy may require immediate protective measures to protect the safety and well-being of the parties and/or the campus community pending the outcome of the investigative and adjudicative processes. Interim protective measures may include the following:

No Contact Order. A no contact order is an official University directive that serves as notice to an individual that they must not have verbal, electronic, written or third party communications with another individual.

For Students:

- *Academic accommodations* such as assistance in transferring to another section of a lecture or laboratory, assistance in arranging for incompletes, leaves or withdrawal from campus, or rearranging class schedules, and
- *Housing accommodations* such as facilitating changes in on-campus housing location to alternate housing, assistance in exploring alternative housing off-campus, and
- *Employment accommodations* such as arranging for alternate University employment, different work shifts, etc.
- *Transportation and parking accommodations*

For Employees:

- *Employment accommodations*, both the complainant and the respondent may request a temporary reassignment, if appropriate, to other work duties and responsibilities, or other work locations, or other work groups/teams or alternative supervision/management.
- *Transportation and parking accommodations*

IX. RETALIATION

Complaints of Retaliation. Individuals who engage in retaliatory behavior against a reporting party or party participating in an investigation, are in violation of this policy, and will be subject to appropriate disciplinary action pursuant to the procedures for this policy. Individuals who believe they have experienced retaliation in violation of this policy should immediately report such conduct to the Title IX Officer at titleixcoordinator@umd.edu.

X. COMPLAINT PROCEDURES

Complaints Against Students. Complaints against students based on a violation of this policy will be reviewed in accordance with the procedures set forth in *Appendix A*.

Complaints Against Staff. Complaints against staff based on a violation of this policy will be reviewed in accordance with the procedures set forth in *Appendix B (to be finalized by December 31, 2014)*

Complaints Against Faculty. Complaints against faculty members based on a violation of this policy will be reviewed in accordance with the procedures set forth in *Appendix C (to be finalized by December 31, 2014)*.

Complaints Against Third Parties Not Affiliated With the University. If a member of the University community (student, faculty or staff) is subjected to sexual misconduct by a third party not affiliated with the University on University premises or during University sponsored activities, the matter should be reported to the Title IX Officer. The matter may be referred to law enforcement with a request that a formal letter be issued to the third party denying access to the University's buildings or grounds for acting in a manner that disrupts or disturbs the normal educational functions of the institution. The University is authorized to deny campus access to a third party engaged in disruptive behaviors under Maryland State law (see Sections 26-101 and 26-102, Education Article, Annotated Code of Maryland).

XI. STEPS TO TAKE FOLLOWING A SEXUAL ASSAULT

Stay Warm. Persons who experience sexual assault may be in a state of shock. It is important to stay warm by wrapping up in a blanket or coat. This will help recovery from shock and make it less likely that physical evidence is disturbed.

Get to a Safe Place and Seek Emotional Support. Talking with a trusted friend or relative or someone who is professionally trained to deal with sexual assault like a confidential CARE advocate or mental health professional at the University Health Center can help you make decisions about what

to do. Whether you decide to go to law enforcement or not, it is important to take care of your own emotional needs. Professional counseling may be beneficial.

Preserve Evidence. If possible, consider taking steps to preserve physical evidence - on the body and at the location of an assault. It is important not to shower or bathe, eat or drink, brush teeth or gargle, change clothes, urinate or defecate, brush or comb hair or smoke. Clothing worn at the time of an assault should not be washed but placed in a paper bag “as is” and brought to the hospital. In order to avoid forgetting important details, write down the facts about the accused and the assault.

Seek Medical Attention. It is important to seek medical attention as soon as possible. A medical examination will ensure appropriate medical treatment, including testing for pregnancy or sexually transmitted infections. You may also want to obtain a Sexual Assault Forensic Exam (SAFE). A medical examination will also allow for the collection of physical evidence by way of a. A SAFE exam allows for the collection of evidence and can ensure any physical evidence is preserved in the event of a report to law enforcement. A SAFE exam may be obtained within 72 hours after an assault at:

Prince George’s Hospital Domestic Violence and Sexual Assault Center (DV/SAC)
(301-618-3154)

<http://www.dimensionshealth.org/index.php/dimensions-healthcare-facilities/prince-georges-hospital-center/domestic-violence-and-sexual-assault-center-dvsac/>

XII. CAMPUS SAFETY

The health and safety of all members of the campus community are the University’s primary concern. The University makes the following services available:

Emergency Phones

University Police Emergency Response Telephones (PERT), recognized by a blue light affixed to each station, are available throughout campus. By activating the phone, an individual will be automatically connected to a Campus Police Dispatcher who is immediately alerted to the location of the phone.

Walking Escorts/Student Police Auxiliary Foot Patrol 301-405-3333

University Police provide a walking escort service 24 hours a day for anyone who feels unsafe while walking on campus. A University Police Officer provides by either the Student Auxiliary Police Aide, or walking escorts.

University Department of Public Safety 301-405-3555 or
Local Police in ANY location - 911

Persons who experience sexual misconduct are strongly encouraged to contact the University's police. If a person is not certain whether criminal conduct is involved, an officer can assist in determining whether a crime has occurred. If sexual misconduct occurred off campus, an officer can assist in contacting the appropriate law enforcement agency. A student can request and receive the assistance of campus police without making a criminal complaint. Campus police can also assist in accompanying the student to a hospital that can provide a Sexual Assault Forensic Exam (SAFE) to both ensure appropriate medical treatment and the timely collection of physical evidence in the event the person seeks to make a criminal complaint.

XIII. 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 they have supervisory and/or evaluative responsibilities *must inform their supervisor(s)* of the relationship(s). Supervisory or evaluative responsibilities may be reassigned, as appropriate. While no relationships are expressly prohibited by this policy, failure to self-report such relationships in a timely manner, as required by this policy, may result in disciplinary action.

XIV. GOVERNMENT AGENCIES THAT ADDRESS COMPLAINTS OF SEXUAL MISCONDUCT

Complaints of sexual misconduct may also be filed with:

Equal Employment Opportunity Commission

City Crescent Building
10 S. Howard Street, Third Floor
Baltimore, MD 21201
Phone: 1-800-669-4000
Fax: 410-962-4270
TTY: 1-800-669-6820
Website: <https://egov.eeoc.gov/eas/>

Maryland Commission on Civil Rights

William Donald Schaefer Tower
6 Saint Paul Street, Ninth Floor
Baltimore, MD 21202-1631
Phone: 410-767-8600

Fax: 410-333-1841
TTY: 410-333-1737
Website: <http://mccr.maryland.gov/>
E-mail: jcole@mccr.state.md.us

It is important to note that in order to protect the legal rights and remedies available to a complainant, a complainant must comply with certain time limits and deadlines. Affected persons should contact the relevant agencies to verify the time limits. Failure to meet required deadlines may result in a loss of rights to seek a legal remedy.

Complaints involving violations of Title IX in the state of Maryland should be directed to:

Office for Civil Rights

U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Phone: 215-656-8541
Fax: 215-656-8605
TDD: 800-877-8339
E-mail: OCR.Philadelphia@ed.gov
Website: http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html

Replacement for:

VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment
VI-1.30(A) University of Maryland Procedures on Sexual Assault and Misconduct

Changes to UMD Sexual Misconduct Policy

October 2014 Revised SM Policy Changes to October 2013 SM Policy

Overall the policy document has been re-organized to increase access, readability and logical flow of the material.

A section on **Training** has been added that broadly addresses the University's prevention and education efforts.

Under **Applicability**, the scope has been revised to further clarify it includes University sponsored programs (not just activities), regardless of location (to ensure study abroad and statewide volunteer programs are included)

Definitions have been separated: **Policy Definitions** from **Prohibited Conduct Definitions** to increase clarity.

Definitions (of Policy Terms) Added: Coercion, Complainant, Confidential, Incapacitated, Interim Protective Measures, Respondent, Responsible University Employee, and the Title IX Officer.

Definitions of Prohibited Conduct Added: Dating violence, Domestic Violence, Retaliation, Sexual Contact (takes the place of Sexual Assault II), Sexual Violence, and Stalking.

Definition Examples have been removed because a policy document generally would not include specific examples, but leave that up to the interpreters of the policy.

A section on **Sanctions** has been added.

Confidential Resources has replaced the section on **Confidentiality**. This is to clarify where individuals may seek confidential assistance.

Reporting Sexual Misconduct has replaced **Reporting Procedures**. There are multiple places a person may report sexual misconduct. The revised policy wanted to make it clear that generally reporting sexual misconduct, other than discussing it with a confidential provider, is not confidential and reporting confidentially is a confusing statement.

The revised policy clarifies how to report a crime and how the University will handle co-occurring criminal actions.

The revised policy clarifies how the University will respond to requests for confidentially or anonymity when a person reports sexual misconduct.

The revised policy clarifies the **Types Of Accommodations and Interim Protective Measures** available for students and employees.

The revised policy includes new provisions for **Investigating And Adjudicating Complaints Against Students (Appendix A)**, and will add new procedures for staff and faculty, when completed.

The revised policy also includes information about **Government Agencies That Address Complaints Of Sexual Misconduct** (Title IX violations).

Changes to UMD Sexual Misconduct Policy
October 2014 Revised SM Policy Changes to October 2013 SM Policy

Student Sexual Misconduct Investigation & Adjudication Procedures (Appendix A)

The new procedures are a hybrid between an investigative model and adjudication model. We have attempted to take the best of both models and combine them into a procedure that will emphasize the capacity and skills of the Title IX Office, while promoting transparency and due process. In establishing the Title IX Office, the University has exponentially increased its capacity to effectively investigate these cases, which will be leveraged to inform the adjudication process.

The expertise and resources focused on an impartial investigation will inform whether or not a case will even be presented for charging and adjudication as a policy violation. Roles have been clarified in order to maintain relative independence and encourage checks and balances throughout the process. The Title IX office conducts the investigation and makes a finding based on all the information available as to whether a policy violation has occurred. If a preliminary finding is made that a violation has occurred, the case is forwarded to the Office of Student Conduct, to determine whether any charges will be issued (and/or if they would like further investigation or information in order to make a charging decision).

If the student is charged, the case will likely be referred to the Standing Review Committee (the Adjudication body). This is a specialized group of faculty, staff and students who have received specialized training (and on-going training) on sexual misconduct (rape, harassment, perpetrator behaviors, effects of alcohol on males and females, victim responses, stalking, lethality, abusive relationships, investigative procedures, effective interviewing strategies, etc.). SRC members will receive an investigation packet that includes the Investigative Report and OSC charges to review prior to the conference. It will also include any additional information submitted by the parties. (The parties have an opportunity to review the report before it is sent to OSC for a determination of charging and request changes and/or add information).

The Investigator presents the report to the SRC. The SRC may question the Investigator. Both parties and their representative may be present during the Investigator's presentation and the SRC's questioning. The SRC will invite both parties to submit any additional questions they may have of the Investigator, in writing, to the SRC Chair. The SRC Chair synthesizes the questions and asks them of the Investigator for all parties to hear. The individual parties may or may not be there depending on their preference. The complainant does not have to attend. If the SRC wants to ask the complainant or respondent questions, or seek clarification about something, they may request that either party meet with them separately and privately. Both parties are allowed an attorney and a support person. If the SRC is considering sanctions, it will request each party submit and/or present an impact statement.

The SRC meetings/conferences are intentionally designed to maintain control over the University's process. The attorneys are there to counsel the student – not address the SRC. The SRC is in control of the meeting. The SRC makes its own independent determination of responsibility. It is addressing two areas: 1) the policy violation and 2) the sanction.

Other members of the SRC will entertain Appeals. This is to ensure that the resources and expertise focused on these cases is consistently maintained throughout the process, from receipt of initial complaint, to the final outcome.



UNIVERSITY SYSTEM OF MARYLAND

VI-1.60 – POLICY ON SEXUAL MISCONDUCT (Approved by the Board of Regents, June 27, 2014)

PURPOSE & APPLICABILITY

The University System of Maryland (USM) is committed to providing a working and learning environment free from Sexual Misconduct, including sexual and gender-based harassment, sexual violence, dating violence, domestic violence, sexual exploitation, and sexual intimidation. USM prohibits and will not tolerate Sexual Misconduct. Sexual Misconduct is a form of sex discrimination prohibited by state and federal laws, including Title IX of the Education Amendments of 1972 as amended (“Title IX”) and Title VII of the Civil Rights Act of 1964 as amended, and also may constitute criminal activity.

USM endeavors to foster a System-wide climate free from Sexual Misconduct through training, education, prevention programs, and through policies and procedures that promote prompt reporting, prohibit retaliation, and promote timely, fair and impartial investigation and resolution of Sexual Misconduct cases in a manner that eliminates the Sexual Misconduct, prevents its recurrence, and addresses its effects. All USM community members are subject to this policy, regardless of sex, sexual orientation, gender identity and gender expression. This includes all students, faculty, and staff of USM institutions (including USM offices and regional centers), as well as third parties and contractors under USM or USM constituent institution control. This Policy applies to Sexual Misconduct in connection with any USM institution, office or regional center education programs or activities, including Sexual Misconduct: (1) in any USM institution facility or on any USM institution property; (2) in connection with any USM or USM institution sponsored, recognized or approved program, visit or activity, regardless of location; (3) that impedes equal access to any USM institution education program or activity or adversely impacts the employment of a member of the USM community; or (4) that otherwise threatens the health or safety of a member of the USM community. Nothing in this policy is intended to supersede or conflict with any federal compliance obligation.

I. Definitions

For purposes of this Policy, the following definitions apply. While institutions may adopt their own definitions that do not conflict with the language below, institutions are strongly encouraged, at a minimum, to adopt the elements of these definitions in institution policies/procedures:

- A. **Consent** means a knowing, voluntary, and affirmatively communicated willingness to mutually participate in a particular sexual activity or behavior. It must be given by a person with the ability and capacity to exercise free will and make a rational

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and reasonable judgment. Consent may be expressed either by affirmative words or actions, as long as those words or actions create a mutually understandable permission regarding the conditions of sexual activity. Consent may be withdrawn at any time. Consent cannot be obtained by force, threat, coercion, fraud, manipulation, reasonable fear of injury, intimidation, or through the use of one's mental or physical helplessness or incapacity. Consent cannot be implied based upon the mere fact of a previous consensual dating or sexual relationship. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.

- B. Dating Violence** means 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 length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- C. Domestic Violence** means 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, or by any other person against an adult or youth complainant protected from those acts by domestic or family violence laws of Maryland.
- D. Interim Measures** means reasonably available steps an institution may take to protect the parties while a Sexual Misconduct investigation is pending.
- E. Responsible Employee** includes any employee who (1) has the authority to take action regarding Sexual Misconduct; (2) is an employee who has been given the duty of reporting Sexual Misconduct; or (3) is someone another individual could reasonably believe has this authority or duty. At a minimum, Responsible Employees must include: the Title IX Coordinator and any Title IX Team members, all institution administrators, all non-confidential employees in their supervisory roles, all faculty, all athletic coaches, institution law enforcement, and all other non-confidential first responders.
- F. Retaliation** means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or USM policy relating to Sexual Misconduct, or because an individual has made a report, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing related to Sexual Misconduct. Retaliation includes retaliatory harassment.

G. Sexual Assault

Sexual Assault I. – Non-Consensual Sexual Intercourse

Any act of sexual intercourse with another individual without Consent. Sexual intercourse includes vaginal or anal penetration, however slight, with any body part or object, or oral penetration involving mouth to genital contact.

Sexual Assault II. – Non-Consensual Sexual Contact

Any intentional touching of the intimate parts of another person, causing another to touch one's intimate parts, or disrobing or exposure of another without Consent. Intimate parts may include genitalia, groin, breast, or buttocks, or clothing covering them, or any other body part that is touched in a sexual manner. Sexual contact also includes attempted sexual intercourse.

- H. Sexual Exploitation** means 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.
- I. Sexual Harassment** is any unwelcome sexual advance, unwelcome request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when: (1) Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a USM or USM institution program or activity; (2) Submission to or rejection of such conduct by an individual is used as the basis for academic, employment, or activity or program participation related decisions affecting an individual; or (3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic 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.
- J. Sexual Intimidation** means (1) threatening to sexually assault another person; (2) gender or sex-based Stalking, including cyber-Stalking; or (3) engaging in indecent exposure.
- K. Sexual Misconduct** is an umbrella term that includes Dating Violence, Domestic Violence, Sexual Exploitation, Sexual Harassment, Sexual Intimidation, Sexual Violence, and Stalking.
- L. Sexual Violence** is a form of Sexual Harassment and refers to physical sexual acts perpetrated without Consent. Sexual Violence includes rape, Sexual Assault, sexual battery, and sexual coercion. Sexual Violence, in any form, is a criminal act.

M. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

II. Institutional Obligations

A. Title IX Compliance Oversight

1. Title IX Coordinator

Each Chief Executive Officer of a USM institution shall designate a Title IX Coordinator responsible for coordinating the institution's efforts to comply with and carry out its responsibilities under Title IX.

The Title IX Coordinator must have adequate training on the requirements of Title IX, including what constitutes Sexual Misconduct, Consent, credibility assessments, and counter-intuitive behaviors resulting from Sexual Misconduct. The Coordinator must understand how relevant institution procedures operate and must receive notice of all reports raising Title IX issues at the institution.

2. Title IX Team

Depending on the size and specific needs of the institution, the institution may want to identify a Title IX Team, which may include the Title IX Coordinator, Deputy Title IX Coordinators, Title IX investigators, and representatives from campus safety, Student Affairs, the Provost's Office, and Human Resources. The Title IX Coordinator shall be responsible for coordinating the activities of the Title IX Team.

B. Notice of Nondiscrimination

1. Content

Each institution must publish a notice of nondiscrimination that contains the following content:

- a. Title IX prohibits the institution from discriminating on the basis of sex in its education program and activities;
- b. Inquiries concerning the application of Title IX may be referred to the institution's Title IX Coordinator or the Office for Civil Rights; and
- c. The Title IX Coordinator and any Title IX Team Member's title, office address, telephone number and email address.

2. Dissemination of Notice

The notice must be widely distributed to all students, employees, applicants for admission and employment, and other relevant persons. The notice must be prominently displayed on the institution's web site and at various locations throughout the campus, and must be included in publications of general distribution that provide information to students and employees about the institution's services and policies. The notice should be available and easily accessible on an ongoing basis.

C. Prompt Investigation and Resolution

1. Investigation

Once an institution knows or reasonably should know of possible Sexual Misconduct, it must take immediate and appropriate action, in accordance with its internal procedures, to investigate or otherwise determine what occurred. This obligation applies to Sexual Misconduct covered by this Policy regardless of where the Sexual Misconduct allegedly occurred, regardless of whether a parallel law enforcement investigation or action is pending, and regardless of whether a formal complaint is filed.

2. Prompt Resolution

If the institution determines that Sexual Misconduct has occurred, the institution must take prompt and effective steps to eliminate the Sexual Misconduct, prevent its recurrence, and address its effects.

- a. In this subsection, "prompt" generally means within 60 calendar days from the time a report is brought to the institution's attention until an initial decision is rendered.
- b. There may be circumstances that prevent an institution from meeting the 60-day timeline. When an institution is unable to meet the 60-day timeline, the institution should document the reasons why it was unable to meet the 60-day timeline.

3. Notice of Outcome

As permitted by law, the institution must notify the parties concurrently, in writing, about the outcome of the complaint and whether or not Sexual Misconduct was found to have occurred. The institution must also concurrently inform the parties of any change to the results or outcome that occurs before the results or outcome become final, and the institution must inform the parties when the results or outcome become final.

D. Policy & Procedures

1. General

- a. Each institution shall adopt and publish policies and procedures, as needed, that:
 - i. Prohibit Sexual Misconduct;
 - ii. Prohibit Retaliation against any individual who reports, testifies, assists, or participates in any manner in a Sexual Misconduct investigation, hearing, or proceeding;
 - iii. Maintain employee and student procedures that provide for the prompt and equitable reporting, investigation, and adjudication of Sexual Misconduct and/or Retaliation cases;
 - iv. Require prompt Interim Measures be implemented, as necessary, to protect the parties during the investigation and adjudication processes;
 - v. Apprise the institution community of various USM institution resources and education programs, as well as other community resources and programs, geared to promote the awareness of and eliminate Sexual Misconduct, prevent its recurrence; and, as appropriate, remedy its effects; and
 - vi. Are easily understood, easily located, and widely distributed.
- b. Each institution shall ensure that Sexual Misconduct cases undergo an appropriate legal sufficiency review by counsel prior to any decision.

2. Required Content

At a minimum, policies and procedures must:

- a. Include a statement prohibiting Sexual Misconduct and Retaliation;
- b. Define Consent, Dating Violence, Domestic Violence, Retaliation, Sexual Harassment, Sexual Exploitation, Sexual Intimidation, Sexual Misconduct, Stalking, and Sexual Violence;

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- c. Identify Responsible Employees required to report any knowledge of Sexual Misconduct to the Title IX Coordinator;
- d. Identify confidential and non-confidential medical, counseling and advocacy resources on and off campus to assist individuals affected by Sexual Misconduct, including sexual assault centers, victim advocacy offices, women's centers, and health centers;
- e. Identify options and procedures for immediate and ongoing assistance following an incident of Sexual Misconduct, including encouragement to obtain immediate medical help and notify law enforcement as appropriate (especially to receive guidance in the preservation of evidence needed for proof of criminal assaults and the apprehension and prosecution of assailants), institution resources available to help obtain such medical or law enforcement assistance, and available Interim Measures; and
- f. Detail the following:
 - i. Identify who can file a complaint of Sexual Misconduct with the institution (to include students, institution employees, and third parties);
 - ii. Explain how to file a complaint;
 - iii. Identify to whom such complaints should be directed;
 - iv. Describe any institutional policies governing confidentiality;
 - v. Identify any USM or institution policies that may grant amnesty to a party or witness for a violation of drug, alcohol and other student conduct policies;
 - vi. Inform the parties about Interim Measures and how to request them. Each institution must provide notice, in writing, to the parties about options for, and available assistance in, obtaining no contact or protective orders, enforcing existing and lawful no contact or protective orders, and changing academic, transportation, residential, and working situations, if such an accommodation is reasonably available. The institution also must advise the parties of existing options for counseling, health, mental health, victim advocacy, legal assistance, and other services available on and off campus;

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- vii. Explain the parties' options and rights, as well as institution responsibilities, regarding notification of law enforcement and campus authorities, as well as student conduct options;
- viii. Afford an investigative process and adjudicative process that provides the parties equal opportunity to present relevant witnesses and evidence throughout the process, and affords the parties similar and timely access to information to be used during any process;
- ix. Explain that the parties are entitled to the same opportunities to have others present during an institution disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an adviser of their choice, and explain the scope of any adviser's role or potential involvement;
- x. Specify "preponderance of the evidence" as the standard of review;
- xi. Identify the range of possible employment and student sanctions for those found responsible for Sexual Misconduct, up to and including suspension, dismissal, expulsion and termination of employment;
- xii. Provide an appeal process that is equally available to the parties;
- xiii. Require the institution, after a legal sufficiency review, to inform the parties, concurrently and in writing, as permitted by law, about the outcome of any investigation, adjudication, and appeal conducted under this policy;
- xiv. Designate reasonably prompt timeframes for the major stages of the process, and set forth the procedure for extending such timeframes, to include the timeframes within which (1) the institution will conduct a full investigation, (2) the parties will receive a notice of outcome, and (3) the parties may file an appeal;
- xv. Provide an affirmative statement to the institution community that the institution will take steps to prevent the occurrence of any Sexual Misconduct and remedy its discriminatory effects;

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- xvi. Advise the community of institutional programs that endeavor to promote the awareness of Sexual Misconduct and prevent its occurrence; and
- xvii. Advise the community of external options for reporting Sexual Misconduct, including local law enforcement, the Equal Employment Opportunity Commission and the U.S. Department of Education Office for Civil Rights.

3. Prohibited Content

Policies and procedures may not include any of the following content:

- a. Requirement that the parties attempt to resolve any Sexual Misconduct matter informally;
- b. Requirement for or allowance of mediation in Sexual Assault cases;
- c. Allowing a party to personally cross-examine the other party, if an institution allows cross-examination;
- d. Allowing or requiring the institution to wait until a concurrent law enforcement proceeding concludes to begin any Sexual Misconduct investigation, Interim Measures or adjudication;
- e. Allowing questioning or evidence about the complainant's sexual history with anyone other than the respondent during any adjudication proceeding (in a proceeding where such evidence or questioning may be appropriate); and
- f. Discouraging a reporter from notifying local law enforcement of alleged Sexual Misconduct.

III. Clery Act Compliance

In handling Sexual Misconduct reports, each institution remains responsible for complying with the requirements of the Crime Awareness and Campus Security Act of 1990 ("Clery Act") and its amendments. Institutions must comply with Clery Act requirements, including crime recording and reporting requirements, where compliance is not otherwise reached by actions under this policy.

IV. MOU with Local Law Enforcement

Each institution must review any Memoranda of Understanding (“MOU”) with local police forces to ensure that the terms of any MOU allow the institution to meet its legal obligations.

V. Training

A. Prevention and Awareness Education

Each institution must develop and implement preventive education, directed toward both employees and students, to help reduce the occurrence of Sexual Misconduct. At a minimum, these educational initiatives must contain information regarding what constitutes Sexual Misconduct, definitions of consent and prohibited conduct, the institution’s procedures, bystander intervention, risk reduction, and the consequences of engaging in Sexual Misconduct. These educational initiatives shall be for all incoming students and new employees. Each institution also must develop ongoing prevention and awareness campaigns for all students and employees addressing, at a minimum, the same information.

B. Training for Persons Involved in Sexual Misconduct Cases

All persons involved in any way in responding to, investigating, or adjudicating Sexual Misconduct reports, including but not limited to, the Title IX Team, Responsible Employees, law enforcement, pastors, counselors, health professionals, resident advisers, and complainant advocates, must have annual training in receiving, reporting and handling complaints of Sexual Misconduct; must be familiar with the institution’s procedures; and must understand the parameters of confidentiality.

VI. Record Keeping

Each institution must keep records of actions taken under this policy, including, but not limited to, records of any reports of Sexual Misconduct, records of any proceedings or resolutions, and records of any Sexual Misconduct trainings (including, but not limited to, lists of trainees, dates of training, and training content), and must maintain such records in accordance with the institution’s Records Retention Schedule.

VII. Implementation

Each Chief Executive Officer shall promptly communicate this policy and applicable procedures to his/her institutional community after the Board of Regents approves the policy. Each Chief Executive Officer also shall promptly identify his/her Title IX Coordinator and other designee(s), as appropriate for this policy. No later than December 31, 2014, each institution must develop procedures as necessary to implement this policy; and shall forward a copy of its Title IX designations and

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procedures, and any subsequent changes in such designations and procedures, to the Chancellor.

Replacement for: USM Policy on Sexual Harassment (VI-1.20) and USM Policy on Sexual Assault (VI-1.30) in their entirety

Cross-reference with: USM Policy on the Reporting of Child Abuse & Neglect (VI-1.50)

New Requirements Imposed by the Violence Against Women Reauthorization Act

The Violence Against Women Reauthorization Act (“VAWA”), which President Obama signed into law on March 7, imposes new obligations on colleges and universities under its [Campus Sexual Violence Act \(“SaVE Act”\) provision, Section 304](#). Those obligations—which to some extent refine and clarify, and to some extent change, existing legal requirements and government agency enforcement statements—likely will require revision of institutional policy and practice. Counsel should be consulted on this complex, sensitive area of institutional law compliance.

Under VAWA, effective March 7, 2014, colleges and universities are required to:

- Report domestic violence, dating violence, and stalking, beyond crime categories the Clery Act already mandates;
- Adopt certain student discipline procedures, such as for notifying purported victims of their rights; and
- Adopt certain institutional policies to address and prevent campus sexual violence, such as to train in particular respects pertinent institutional personnel.

The interplay of VAWA and other pronouncements—notably the April 4, 2011 [Dear Colleague Letter](#) under Title IX issued by the Office for Civil Rights of the Department of Education (“ED”) (“OCR Guidance Letter”) and prevailing institutional policy—warrants legal risk management judgment by institutional counsel and compliance officers, and implicates a range of management steps. Here we identify some key points.

I. New Reporting Requirements

VAWA’s SaVE Act provision imposes new reporting requirements:

A. The Clery Act requires annual reporting of statistics for various criminal offenses, including forcible and non-forcible sex offenses and aggravated assault. VAWA’s SaVE Act provision adds domestic violence, dating violence, and stalking to the categories that, if the incident was reported to a campus security authority or local police agency, must be reported under Clery. Parsed for clarity, these offenses are defined:

1. “Domestic violence” includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

2. “Dating violence” means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.
3. “Stalking” means a course of conduct directed at a specific person that would cause a reasonable person to fear for her, his, or others' safety, or to suffer substantial emotional distress.

B. The provision adds “national origin” and “gender identity” to the hate crime categories, involving intentional selection of a victim based on actual or perceived characteristics, that must be reported under the Clery Act.

C. The provision requires, with respect to the “timely reports” the Clery Act mandates for crimes considered a threat to other students and employees, that victims' names be withheld.

D. The effective date of these requirements is one year after enactment of VAWA; that is, March 7, 2014. Presumably in the coming year ED will issue guidance on the annual campus security report, by updating ED's [Handbook for Campus Safety and Security Reporting](#) (Feb. 2011).

II. New Student Discipline Requirements

A. Current requirements in the Clery Act are that institutions inform students of procedures victims should follow, such as preservation of evidence and to whom offenses should be reported. VAWA adds that institutional policy must also include information on:

1. Victims' option to, or not to, notify and seek assistance from law enforcement and campus authorities.
2. Victims' rights and institutional responsibilities regarding judicial no-contact, restraining, and protective orders.

B. VAWA prescribes standards for investigation and conduct of student discipline proceedings in domestic violence, dating violence, sexual assault, and stalking cases.

1. Institutional policy must include a “statement of the standard of evidence” used. Unlike some earlier drafts of the legislation, VAWA does not prescribe the evidentiary standard. The OCR Guidance Letter, at page 11, directs a standard of “preponderance of the evidence.” That letter, although not positive law, authoritatively represents OCR enforcement policy. Whether OCR's position would withstand judicial review is an open question.
2. Institutional officials who conduct the proceeding must be trained on how to investigate and conduct hearings in a manner that “protects the safety of victims” and “promotes accountability.”
3. Institutional policy must identify “sanctions or protective measures” the institution may impose following a final determination of rape, acquaintance rape, domestic violence, dating violence, sexual assault or stalking.
4. “[T]he accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be

accompanied to any related meeting or proceeding by an advisor of their choice....”

5. Accuser and accused must be notified “simultaneously” and “in writing” of: the outcome of the proceeding; appeal procedures; any change to the result before it becomes final; and when the result becomes final. The OCR Guidance Letter, at page 13, merely “recommends” that the parties be provided the determination “concurrently.”
6. Institutional policy must address how victims' confidentiality will be protected, including record-keeping that excludes personally-identifiable information on victims. OCR's Guidance Letter, at page 5, encourages institutions to be cognizant of victims' confidentiality, but does not mandate that institutional policy address it.

III. New Requirements to Educate Students and Employees on Sexual Violence

Under VAWA, new students and new employees must be offered “primary prevention and awareness programs” that promote awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking. The OCR Guidance Letter, at pages 15-16, “recommends” that institutions implement preventive education programs; VAWA is more prescriptive in its requirements.

The training programs must include:

- A. A statement that the institution prohibits those offenses.
- B. The definition of those offenses in the applicable jurisdiction.
- C. The definition of consent, with reference to sexual offenses, in the applicable jurisdiction.
- D. “Safe and positive” options for bystander intervention an individual may take to “prevent harm or intervene” in risky situations.
- E. Recognition of signs of abusive behavior and how to avoid potential attacks.
- F. Ongoing prevention and awareness campaigns for students and faculty on all of the above.

Conclusion

VAWA’s ramifications include that institutions will need to review and modify policies and procedures for handling asserted sexual offenses, and train carefully personnel responsible in this area. This memo primarily addresses VAWA. Requirements under the OCR Guidance Letter, the Clery Act, Title IX, Title VII, State employment laws, local human rights ordinances, or the sundry apposite regulations and agency pronouncements are also relevant and should be reviewed. College and university counsel expert on those and on faculty, student, and staff rights under institutional handbooks, manuals, and other policies should be consulted. In light of acute sensitivities on campus in this sphere, and by parents of students involved in these situations, and the common prospect of related civil and criminal litigation as well as often extensive publicity, university leadership should give close reading and attention to VAWA and its requirements.

White House Task Force to Protect Students from Sexual Assault

Checklist for Campus Sexual Misconduct Policies

The Task Force to Protect Students from Sexual Assault is committed to supporting institutions of higher education in preventing sexual misconduct, encouraging reports of such misconduct, improving responses to reports of such misconduct, and complying with applicable federal laws.

The following checklist for sexual misconduct policies (checklist) highlights elements that are particularly important for institutions to consider when drafting sexual misconduct policies as part of their overall response to sexual misconduct. The Task Force recommends using this document as a guided checklist for developing effective sexual misconduct policies. However, the Task Force cautions institutions not to adopt the checklist, in part or in whole, without first engaging in a comprehensive drafting process that considers the unique aspects of the institution and its student body. The items listed in the checklist are intended to be guidelines, neither exhaustive nor exclusive, to help a school cover the important bases.

The policy of each institution will vary in detail, specificity, and components, reflecting differences in state or local legal requirements and each school's students, size, administrative structure, and what it has learned from past experiences. Additionally, the checklist does not constitute legal advice or create additional legal obligations, and institutions that address these elements in their sexual misconduct policy, in part or in whole, may still be found to be in violation of federal law(s) (e.g., if the institution fails to effectively address a hostile education environment created by sexual misconduct).

Why Should a Campus Have a Separate Sexual Misconduct Policy?

The purpose of creating a sexual misconduct policy (policy) is to provide a single, easily accessible and user-friendly document for students, employees, and others affected by sexual misconduct to find information regarding an institution's rules and procedures, including the rights of students and the obligations of the institution and its employees. The policy should cover every department or school within the institution.

How Should a Campus Develop a Sexual Misconduct Policy?

The Task Force encourages each institution to engage in a comprehensive policy drafting process. The policy development process should be driven by campus leadership at the highest level so that the importance of this policy is clear to students, faculty, employees, and the committee drafting the policy.

Who should participate?

To improve the quality, effectiveness, and perceived legitimacy of the policy, the Task Force encourages institutions to:

- Identify key stakeholders – particularly students, concerned student groups, including LGBTQ student groups, campus security, local law enforcement, resident assistants,

survivors of sexual assault, and providers of victim support services, including local rape crisis centers – whose expertise and input should be incorporated into the drafting process.

- Identify the office or personnel responsible for drafting the policy, but also engage a range of administrators to ensure the policy has broad institutional support.
- Consider retaining an independent sexual assault policy expert to assist in reviewing and revising existing policies or drafting new ones.
- Engage in a vetting period where key stakeholders have multiple opportunities to provide feedback on the proposed policy to assess its clarity, quality, and effectiveness.

Who are the target audiences for the policy?

- Review the policy to ensure that it is set out in clear, logical sections that students can follow and understand. In determining whether the policy and its publication formats are user-friendly and appropriate in tone, policy drafters should review the material from the perspective of a student who has been affected by sexual misconduct.
- Ensure that the policy is published in a format or formats that make it readily available everywhere, including to students with disabilities and English language learners.

What other documents should be considered during development of the policy?

- Review all applicable federal laws, including Title IX of the Education Amendments of 1972, Title IV of the Civil Rights Act of 1964, the Family Educational Rights and Privacy Act of 1974, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act and their implementing regulations and related guidance; any applicable state and local laws; and consult with legal counsel to ensure that the policy complies with all applicable federal, state, and local laws.
- Coordinate the policy with other institution policies and procedures, including student codes of conduct and other nondiscrimination policies affecting students and employees.

What should happen when the policy is complete?

- Develop a plan for implementing and widely publicizing the policy to the entire campus community and provide mandatory training on the new policy.
- Establish procedures for regularly reviewing, evaluating, and updating the policy.
- Create user-friendly materials to explain the policy and how victims can get help, and provide these materials online and through other strategies appropriate for the campus.

What Should a Campus Consider Including in Its Sexual Misconduct Policy?

The following checklist highlights elements that are particularly important for institutions to consider when drafting sexual misconduct policies:

1. Introduction
 - a. Clear statement of school's prohibition against sex discrimination, which includes sexual misconduct.
 - b. Statement of the school's commitment to address sexual misconduct.
2. Scope of the Policy
 - a. Identify the persons, conduct, locations (including off campus), programs, activities, and relationships covered by the school's sexual misconduct policy.
 - b. Clearly state the policy applies to all students and employees, regardless of sexual orientation or gender identity, and explain that the policy applies to third parties.
 - c. Briefly explain the school's confidentiality policy, including reference to the more detailed confidentiality provisions in the policy. For a sample confidentiality policy go here: <http://notalone.gov/assets/reporting-confidentiality-policy.pdf>
3. Options for Assistance Following an Incident of Sexual Misconduct
 - a. Immediate Assistance
 - i. Identify and provide contact information for the trained on- and off-campus advocates and counselors who can provide an immediate confidential response in a crisis situation (e.g., obtain needed resources, explain reporting options, and help navigate the reporting process);
 - ii. Provide emergency numbers for on- and off- campus safety, law enforcement, and other first responders (e.g., the Title IX coordinator);
 - iii. Describe the sexual assault response team (SART) process and resources SART members can offer;
 - iv. Identify health care options, both on- and off- campus:
 1. Ensure the victim is aware of the options to seek treatment for injuries, preventative treatment for sexually transmitted diseases, and other health services.
 2. Discuss the option of seeking medical treatment in order to preserve evidence.
 3. Identify where/how to get a rape kit or find a Sexual Assault Nurse Examiner (SANE).
 4. List locations, including contact information, for an advocate (e.g., a local rape crisis center, on-campus advocacy program) who can accompany a victim to the hospital or health provider.
 - b. Ongoing Assistance

1. Identify counseling and support for victims of sexual misconduct, whether or not a victim chooses to make an official report or participate in the institutional disciplinary or criminal process.
 2. Identify options for disclosing confidentially with counseling, advocacy, health, mental health, or sexual-misconduct-related sources, both on and off campus.
 3. Identify those who can provide ongoing support during the institutional disciplinary or criminal process.
 - ii. Academic Accommodations and Interim Measures
 1. Describe the immediate steps and interim measures that the school can provide to ensure the safety and well-being of the victim, such as the ability to move dorms, change work schedules, alter academic schedules, withdraw from/retake a class without penalty, and access academic support (e.g., tutoring).
 2. Describe additional interim measures that the school may be able to provide for complainants while an investigation is pending such as no contact orders and changing the alleged perpetrator's living arrangements or course schedule. See Section 7.g about interim measures.
4. Title IX Coordinator: Identify the school's Title IX coordinator and briefly explain the Title IX coordinator's role in the school's overall response to sexual misconduct; provide references to sections of the policy that provide greater details regarding the Title IX coordinator's duties.
5. Definitions
- a. Clearly define all conduct prohibited by the policy, including:
 - i. Sexual harassment
 - ii. Hostile environment caused by sexual harassment
 - iii. Sexual assault
 1. Non-consensual sexual contact, and
 2. Non-consensual sexual intercourse
 - iv. Domestic violence
 - v. Dating violence
 - vi. Sexual exploitation
 - vii. Stalking
 - viii. Retaliation
 - ix. Intimidation
 - b. Additional terms that should be defined include:
 - i. Consent

The input of students and sexual assault experts can be helpful in developing a definition of consent. At minimum, the definition should recognize that:

 - consent is a voluntary agreement to engage in sexual activity;
 - someone who is incapacitated cannot consent;
 - past consent does not imply future consent;

- silence or an absence of resistance does not imply consent;
 - consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another;
 - consent can be withdrawn at any time; and
 - coercion, force, or threat of either invalidates consent.
- ii. Incapacitation (such as due to the use of drugs or alcohol, when a person is asleep or unconscious, or because of an intellectual or other disability that prevents the student from having the capacity to give consent)

6. Reporting Policies and Protocols

- a. Identify formal reporting options – e.g., criminal complaint, institutional complaint, report to “responsible employee,” including the Title IX coordinator. Explain how each option works and include contact information for the people to whom one can make a report.
- b. Identify alternatives to reporting – e.g., privileged or confidential disclosures
- c. Describe policies governing confidentiality
 - i. Specify those employees to whom a student can disclose in confidence and those “responsible employees” who must report incidents (including personally identifying details) to the Title IX Coordinator. Consider particularly how a school will ensure that a student understands an employee’s reporting obligation before he or she reveals any information to that employee.
 - ii. Describe what information will be kept confidential and what information may be disclosed, to whom it will be disclosed, and why.
 - iii. Explain when the school may not be able to honor a student’s request that his or her name not be disclosed to the alleged perpetrator or that no investigatory or disciplinary action be taken. Identify the employee responsible for evaluating such requests for confidentiality or no action.
- d. Explain the school’s reporting obligations under the Clery Act, including the annual reporting responsibilities of Campus Security Authorities and the school’s obligation to issue timely warnings.
- e. Explain the process for third-party and anonymous reporting.
- f. Ensure the policy prohibits retaliation against those who file a complaint or third-party report, or otherwise participate in the investigative and/or disciplinary process (e.g., as a witness), and explain that the school will take strong responsive action if retaliation occurs.
- g. Describe when the school will grant amnesty from drug, alcohol, and other student conduct policies.

7. Investigation Procedures and Protocols

- a. Identify the Title IX Coordinator(s) and explain roles and responsibilities.
- b. Identify who conducts the investigation and what an investigation might entail.
- c. Specify a reasonably prompt time frame for conducting the investigation and resolving the complaint, as well as the process for extending the timeframe.
- d. Explain the processes for preserving evidence.

- e. Provide the respondent and complainant equitable rights during the investigative process.
- f. Set forth parameters and clarify what information may and may not be shared during a parallel investigation with law enforcement (e.g., via a Memorandum of Understanding with local law enforcement).
- g. Explain that where necessary, the school will take immediate steps to protect complainants pending the final outcome of an investigation, including academic accommodations and other interim measures. These steps may include the ability to change housing or dining facilities; change work schedules; alter academic schedules; withdraw from/retake a class without penalty; access academic support such as tutoring; issue no contact orders; and change the alleged perpetrator's living arrangements or course schedule.
- h. Explain the school's response if a victim's request for confidentiality limits the school's ability to investigate a particular matter. A school may take steps to limit the effects of the alleged sexual misconduct and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the student complainant. Examples include: providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; revising and publicizing the school's policies on sexual misconduct; and conducting climate surveys regarding sexual misconduct.

8. Grievance/Adjudication Procedures

- a. Explain the grievance/adjudication process, including:
 - i. that mediation is never appropriate in sexual misconduct cases;
 - ii. that the preponderance-of-the-evidence (i.e., more likely than not) standard will be used in any Title IX fact-finding and related proceedings, including any hearings;
 - iii. identify the adjudicators, including:
 - 1. the trained individuals who determine whether the alleged sexual misconduct occurred
 - 2. the individuals who determine the sanction
 - 3. a process by which either party may raise issues related to potential conflicts of interest of such individuals
 - iv. the persons who may attend and/or participate in the adjudication process and the extent of that participation.
- b. Outline the rights and roles of both parties in the adjudication process, including:
 - i. notice of hearing(s) to both parties;
 - ii. an opportunity for both parties to present witnesses and other evidence, including:
 - 1. a description of the types of evidence that may or may not be presented, including but not limited to:
 - a. prohibiting questioning or evidence about the complainant's prior sexual conduct with anyone other than the alleged perpetrator

- b. clarifying that evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual misconduct
 - 2. if the school conducts a hearing, and generally allows for cross-examination, a description of alternative methods that preclude the respondent from personally cross-examining the complainant
 - iii. extension of any other rights given to the alleged perpetrator to the complainant.
- c. Explain the possible results of the adjudication process, including:
 - i. sanctions;
 - ii. remedies/accommodations for the victim;
 - iii. additional remedies for the school community.
- d. Outline how the parties will be informed of the results of the adjudication, including:
 - i. simultaneous written notice to both parties of the outcome of the complaint and the option to appeal, if applicable;
 - ii. a statement that the school will not require a party to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the redisclosure of information related to the outcome of the proceeding.
- e. Describe the appellate procedures (if appeals are permitted), including grounds for appeal, standards of review, the person/entity that will decide appeals, and the applicable reasonably prompt time frames.

9. Prevention and Education

Outline the school's approach to prevention, including type and frequency of prevention programming and educational/outreach activities. Include bystander intervention and programs to educate students about the school's sexual misconduct policies.

10. Training

- a. Outline how faculty and staff are trained and on what issues.
- b. At a minimum, the Title IX coordinator, law enforcement, "responsible employees," victim advocates, and anyone else who is involved in responding to, investigating, or adjudicating sexual misconduct must receive adequate training.

Sample Language and Definitions of Prohibited Conduct for a School's Sexual Misconduct Policy

Under Title IX of the Education Amendments of 1972, any educational institution receiving Federal financial assistance must notify the school community of its nondiscrimination policy and the name and contact information for its Title IX coordinator, and adopt and publish grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints. The institution should also ensure that the school community has a clear understanding of what constitutes sexual misconduct, when such conduct creates a hostile environment, the potential consequences for such conduct, and how the school processes complaints.

The Task Force to Protect Students from Sexual Assault (“Task Force”) provides the following guide with sample language and definitions of key terms for schools to consider when developing its sexual misconduct policy, and definitions for prohibited conduct under that policy. This guide is not meant to be simply cut and pasted into a policy. Among other things, a school must determine how these definitions fit into a larger sexual misconduct policy. The Task Force suggests engaging in the comprehensive drafting process recommended in the [Checklist for Campus Sexual Misconduct Policies](#).

This sample language is neither exhaustive nor exclusive, and the sections of every school's policy must reflect its own character and circumstances. Policies will vary in detail, specificity and components, reflecting differences in state or local legal requirements and each school's students, size, administrative structure, and what it has learned from past experiences.

The sample language and definitions do not constitute legal advice or create new legal obligations. Institutions that use the sample language and definitions in their sexual misconduct policies, in part or in whole, may still be found to be in violation of federal law(s).

Prohibited Conduct

The two forms of prohibited conduct below cover both sex-based harassment, including but not limited to sexual harassment, sexual assault, and sexual exploitation, as well as harassment based on gender identity, gender expression, and nonconformity with gender stereotypes. Sample definitions for *italicized* terms in the two provisions are offered in the next section. In addition, in the sample definitions, terms that are further defined are also *italicized*.

1. No person may engage in *sex-based harassment* that creates a *hostile environment* in or under any program or activity of this College.
2. No person who is an employee or agent of this College (including a student employee) may condition a decision or benefit on a student's submission to *sex-based harassment*

(regardless of whether the student resists and suffers the threatened harm or submits and avoids the threatened harm).

Note that these two provisions do not address many other forms of sex discrimination that are prohibited by state, federal, and local laws and that should also be addressed in a school's sexual misconduct policy. Schools should consult with their legal counsel to ensure that their policies are consistent with all applicable laws. Further, as noted in the [Checklist for Campus Sexual Misconduct Policies](#), in order for such a policy to be clear it must identify the scope of the policy, including the persons, locations (including off campus), programs, activities, and relationships that it covers. And for the policy to be effective, it must be integrated into a broader policy addressing assistance for victims, confidentiality, reporting, investigations, adjudication, prevent and education, and training.

Definitions

A. Sex-Based Harassment

"Sex-based harassment" includes *sexual harassment* and *gender-based harassment*.

B. Sexual Harassment

"Sexual harassment" is *unwelcome conduct* of a sexual nature, including but not limited to unwelcome sexual advances; requests for sexual favors; or other verbal or nonverbal conduct of a sexual nature, including *rape, sexual assault, and sexual exploitation*. In addition, depending on the facts, dating violence, domestic violence, and stalking may also be forms of sexual harassment.

C. Gender-Based Harassment

"Gender-based harassment" is *unwelcome conduct* of a nonsexual nature based on a student's actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes.

D. Unwelcome Conduct

Conduct is considered "unwelcome" if the student did not request or invite it and considered the conduct to be undesirable or offensive.

Unwelcome conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Unwelcome conduct does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Unwelcome conduct can involve persons of the same or opposite sex.

Participation in the conduct or the failure to complain does not always mean that the conduct was welcome. The fact that a student may have welcomed some conduct does not necessarily

mean that a student welcomed other conduct. Also, the fact that a student requested or invited conduct on one occasion does not mean that the conduct is welcome on a subsequent occasion.

E. Hostile Environment

A “hostile environment” exists when *sex-based harassment* is sufficiently serious to deny or limit the student’s ability to participate in or benefit from the College’s programs or activities.

A hostile environment can be created by anyone involved in a College’s program or activity (*e.g.*, administrators, faculty members, students, and campus visitors).

In determining whether *sex-based harassment* has created a hostile environment, the College considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not enough, that the conduct was *unwelcome* to the student who was harassed. But the College will also need to find that a reasonable person in the student’s position would have perceived the conduct as undesirable or offensive in order for that conduct to create or contribute to a hostile environment.

To make the ultimate determination of whether a hostile environment exists for a student or students, the College considers a variety of factors related to the severity, persistence, or pervasiveness of the *sex-based harassment*, including: (1) the type, frequency, and duration of the conduct; (2) the identity and relationships of persons involved; (3) the number of individuals involved; (4) the location of the conduct and the context in which it occurred; and, (5) the degree to which the conduct affected one or more student’s education.

The more severe the *sex-based harassment*, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single instance of *sexual assault* may be sufficient to create a hostile environment. Likewise, a series of incidents may be sufficient even if the *sex-based harassment* is not particularly severe.

First Amendment Considerations

This policy does not impair the exercise of rights protected under the First Amendment. The College’s sexual misconduct policy prohibits only sex-based harassment that creates a hostile environment. In this and other ways, the College applies and enforces this policy in a manner that respects the First Amendment rights of students, faculty, and others.

F. Sexual Assault

“Sexual assault” is actual or attempted sexual contact with another person without that person’s *consent*. Sexual assault includes, but is not limited to:

- Intentional touching of another person’s intimate parts without that person’s *consent*;
or
- Other intentional sexual contact with another person without that person’s *consent*; or

- Coercing, forcing, or attempting to coerce or force a person to touch another person's intimate parts without that person's *consent*; or
- *Rape*, which is penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person's consent.

G. Consent

"Consent" must be informed, voluntary, and mutual, and can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person.

If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption that meets this standard, or being asleep or unconscious.

H. Sexual Exploitation

"Sexual exploitation" occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without that person's *consent*. Examples of behavior that could rise to the level of sexual exploitation include:

- Prostituting another person;
- Recording images (*e.g.*, video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's *consent*;
- Distributing images (*e.g.*, video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not *consent* to such disclosure and objects to such disclosure; and,
- Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's *consent*, and for the purpose of arousing or gratifying sexual desire.



THE UNITED STATES
DEPARTMENT of JUSTICE

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SEXUAL ASSAULT

President Obama Issues Presidential Proclamation for National Sexual Assault Awareness and Prevention Month

Hotlines | What is Sexual Assault? | Resources

HOTLINES

 [National Sexual Assault Hotline](#) ^{external link} operated by RAINN
To be connected to the rape crisis center nearest to you, dial
1-800-656-HOPE (4673)

[National Sexual Violence Resource Center \(NSVRC\)](#) ^{external link}
1-877-739-3895

WHAT IS SEXUAL ASSAULT?

Sexual assault is any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Falling under the definition of sexual assault are sexual activities as forced sexual intercourse, forcible sodomy, child molestation, incest, fondling, and attempted rape.

SEXUAL ASSAULT RESOURCES

[National Institute of Justice](#)

[Centers for Disease Control and Prevention](#)

[AEquitas](#) ^{external link}

[End Violence Against Women International](#) ^{external link}

[International Association of Chiefs of Police](#) ^{external link}

[Mending the Sacred Hoop](#) ^{external link}

[National Alliance to End Sexual Violence](#) ^{external link}

[National Sexual Violence Resource Center](#) ^{external link}

[National Center for Victims of Crime](#) ^{external link}

[Rape Abuse Incest National Network](#) ^{external link}

[Resource Sharing Project](#) ^{external link}

[Responding to Campus Sexual Assault](#)

[Sisters of Color Ending Sexual Assault](#) ^{external link}

[Vision of Hope](#) ^{external link}



FIND LOCAL RESOURCES

GENERAL INFORMATION
OFFICE ON VIOLENCE
AGAINST WOMEN

LEADERSHIP

Bea Hanson
Principal Deputy Director

CONTACT

Office on Violence Against Women
145 N St., NE, Suite 10W.121
Washington, D.C. 20530
202-307-6026
Fax: 202-305-2589
Email: ovw.info@usdoj.gov

VISIT
TRIBAL JUSTICE  SAFETY



VIOLENCE AGAINST WOMEN
ACTION CENTER

Find Help for Victims
Apply for a Grant
Work for OVW
Responding to Campus Sexual Assault

DEFENDING
CHILDHOOD

Appendix 7

Definitions of Sexual Assault in Policies at Peer Institutions (Aspirational & Big Ten Conference) *Compiled by Senate Office Staff – Winter 2015*

University of California, Berkeley

Berkeley's policy on [Sexual Harassment and Sexual Violence](#) defines sexual assault as occurring "when physical sexual activity is engaged without the consent of the other person or when the other person is unable to consent to the activity. The activity or conduct may include physical force, violence, threat, or intimidation, ignoring the objections of the other person, causing the other person's intoxication or incapacitation through the use of drugs or alcohol, or taking advantage of the other person's incapacitation (including voluntary intoxication)." Rape is included in the definition of sexual violence.

University of California, Los Angeles

UCLA's [Student Conduct Code](#) states that sexual misconduct occurs when a person knowingly causes another person to engage in a sexual act by a) physical force, violence, threat, intimidation, and/or coercion; b) ignoring the objections of the other person; c) causing the other's intoxication or impairment through the use of drugs or alcohol; or d) taking advantage of the other person's incapacitation, state of intimidation, helplessness, or other inability to consent. It goes on to say that sexual misconduct also occurs when a person, having failed to take appropriate steps to gain effective consent, engages in a sexual act with another under the unreasonable belief that effective consent had been obtained.

University of North Carolina, Chapel Hill

UNC's [Policy on Prohibited Discrimination, Harassment and Related Misconduct](#) defines sexual assault as "having or attempting to have Sexual Contact with another individual without Consent." Sexual contact is defined as "Intentional touching or penetration of another person's clothed or unclothed body," with examples provided.

University of Illinois at Urbana-Champaign

Multiple sources at the University – including the [University Police](#), [Health Center](#), and [Office of Diversity, Equity, and Access](#) – defer to the Illinois Criminal Code to define "sexual assault." The relevant statutes are [720 ILCS 5/11-1.20](#), "Criminal Sexual Assault," defined as "sexual penetration and: (1) uses force of the threat of force; (2) knows that the victim is unable to... consent;" and other statutory definitions related to victims' age or relationship to perpetrator. 720 ILCS 5/11-1.30, "Aggravated Criminal Sexual Assault," encompasses sexual assault involving the use of weapon or additional physical threat or harm to the victim, and elderly or handicapped victims. Other sections define "sexual abuse" as forcible or non-consenting "sexual conduct," but sexual conduct is not explicitly defined in the Code.

Indiana University

Indiana provides a variety of definitions based on the source: The website of the Dean of Students [defines](#) sexual assault as "any involuntary sexual act in which a person is threatened, coerced, or forced to engage against their will, or any non-consensual sexual touching of a person. It is sex without consent." A "Stop Sexual Violence" website, attributed to The Trustees of Indiana University, [defines](#)

Definitions of Sexual Assault in Policies at Peer Institutions (Aspirational & Big Ten Conference)
Compiled by Senate Office Staff – Winter 2015

sexual assault as penetration **or** “sexual contact” that is either non-consensual or forcible. Sexual misconduct and sexual violence are defined as ‘catchall’ terms to encompass sexual assault, sexual harassment, rape, and other acts. The website explains that “Indiana University is currently revising Policy UA-03, the Policy Against Sexual Harassment to more clearly encompass all forms of sexual misconduct, including acts of sexual violence and sexual assault.” Indiana’s policy index does not provide a section for sexual misconduct beyond sexual harassment. The Code of Student Rights, Responsibilities and Conduct outlines examples of student misconduct. In [Section H](#), “physical abuse” includes sexual assault and sexual contact as two separate sub-categories, although neither is explicitly defined.

University of Iowa

[Chapter 2](#) of Iowa’s Operations Manual details prohibited sexual misconduct. This includes four distinct categories: sexual assault, harassment, exploitation, and intimidation. Sexual assault is defined as “a continuum of conduct from forcible intercourse to nonphysical forms of pressure that compel individuals to engage in sexual activity against their will.” This includes different forms of sexual intercourse and/or touching.

University of Michigan

Michigan’s sexual assault policy is not stored in its Standard Practice Guide, but stands alone on its own domain: studentsexualmisconductpolicy.umich.edu. The policy [defines](#) sexual assault as “Unwanted or unwelcome touching of a sexual nature, including hugging, kissing, fondling, oral sex, anal or vaginal intercourse, or other physical sexual activity that occurs without valid consent.” The only other major category defined under the umbrella term of Sexual Misconduct here is sexual harassment.

Michigan State University

MSU’s Office for Inclusion and Intercultural Initiatives [defines](#) sexual assault as “actual, attempted or threatened sexual contact with another person without that person’s consent” and rape as “sexual penetration of another person without that person’s consent. Penetration can be of the mouth, vagina, or anal opening, and can be with a penis, tongue, finger, or foreign object.”

University of Minnesota

The University Regents [Student Conduct Code](#) defines sexual assault as “actual, attempted or threatened sexual contact with another person without that person’s consent.” “Sexual contact” is not defined any further. No other categories of sexual misconduct appears in the Student Conduct Code.

University of Nebraska-Lincoln

UNL’s [sexual misconduct policy](#) does create separate definitions for sexual assault and sexual contact. However, UNL does not use a separate definition of sexual contact to create two separate offenses, but instead further clarifies instances of sexual assault. Sexual assault is defined as sexual penetration **or** sexual contact that is either nonconsensual or forcible. The policy also includes a detailed definition of sexual penetration.

Northwestern University

Northwestern's [sexual misconduct policy](#) describes several categories of Prohibited Conduct: Sexual Penetration without Consent; Sexual Contact without Consent; Sexual Exploitation; Stalking; Dating/Domestic Violence; and, Sexual Harassment. Sexual Penetration is defined as "Any penetration of the sex organs, anus, or mouth of another person when consent is not present," including oral sex. Sexual Contact is defined as "Knowingly touching or fondling a person's genitals, breasts, thighs, groin, or buttocks, or any other contact of a sexual nature (including by bodily fluids), when consent is not present." These categories and definitions appear *verbatim* in the 2014-15 Student Handbook. The Center for Awareness, Response, and Education [asserts](#) that sexual assault encompasses both categories of Sexual Contact and Sexual Penetration without Consent. However, this may be superseded by the stated policy, which seems to clarify between the two categories of prohibited conduct.

Ohio State University

The Office of Student Conduct [defines](#) sexual assault as "any form of non-consensual sexual activity... from intimidation to touching to various forms of penetration and rape." No additional category distinctions – besides harassment or stalking – are made.

Pennsylvania State University

PSU's [Policy #AD-85](#) is its policy on student sexual misconduct. AD-85 says sexual assault "includes, but is not limited to, attempted or unwanted sexual activity, such as sexual touching and fondling." The policy provides an extensive explanation of its use of 'touching' and 'fondling.'

Purdue University

Purdue's sexual assault information website – a joint effort by the Office of the Vice President for Ethics and Compliance, Campus Title IX officers, Office of the Dean of Students, and the Women's Resource Network – provides its [definition](#) of sexual assault. Purdue defines sexual assault as "any sexual contact, including but not limited to intercourse (rape), that occurs without consent and/or through coercion."

University of Wisconsin-Madison

The University Health Services [defines](#) sexual assault as "any sexual contact made without consent... [including] unwanted touching, kissing, fondling, or penetration of the mouth, vagina, or anus with a finger, penis or object." Both University and Health Services and the Office of the Provost (who enforces mandatory sexual assault reporting) refer to state law for official definitions. [WI § 940.225](#) creates four degrees of sexual assault, which vary by the nature of contact and the level of force or coercion.

Rutgers University

The [University Code of Student Conduct](#) Section VII: Rules and Regulations details Violations, including a category of "Sexual assault or non-consensual sexual contact." This includes forced and non-consensual penetration and touching.

Definitions of Sexual Assault in Policies at University System of Maryland (USM) Institutions
Compiled by Senate Office Staff – Winter 2015

Bowie State University

BSU's December 2014 [Policy on Sexual Misconduct](#) includes the several categories in the [University System of Maryland's June 2014 policy](#): Sexual Harassment; Sexual Assault; Sexual Violence; Sexual Exploitation; Sexual Intimidation; Stalking; Dating Violence; and, Domestic Violence.

Coppin State

Unable to identify any definitions of sexual assault.

Frostburg State University

Frostburg adopts the USM's definitions and categories ((a) *Sexual Assault I. – Non-Consensual Sexual Intercourse* and (b) *Sexual Assault II – Non-Consensual Sexual Contact*) in its [Policy Statements, 2014-15](#).

Salisbury University

Salisbury University's [policy directory](#) appears to directly implement USM's policy on sexual misconduct rather than interpreting it. The [Student Code of Conduct](#) leaves these categories intact while expanding the definitions slightly to include additional examples of assault.

Towson University

Towson's [Policy on Sexual Misconduct](#) uses the USM's policy categories and definitions of sexual assault. The only variation is a clarification that "Sexual Assault also includes any offense that meets the definition of rape, fondling, incest or statutory rape as used in the Federal Bureau of Investigation's Uniform Crime Reporting Program."

University of Baltimore

University of Baltimore's [Sexual Misconduct Policy](#) includes USM's categories and definitions verbatim.

University of Maryland, Baltimore County

UMBC's December 2014 [Interim Policy on Sexual Misconduct](#) divides a category of Sexual Violence into two sub-categories: *Sexual Assault I* and *Sexual Assault II*. There is little substantive difference between the definitions here and in USM's policy. Sexual Assault II is defined as "any act of non-consensual sexual contact (however slight)."

University of Maryland, Eastern Shore

The UMES December 2014 [UMES Policy and Procedure on Sexual Misconduct](#) includes the same sexual assault categories and definitions as the USM policy.

University of Maryland, University College

UMUC's [Policy 041.00 - Sexual Misconduct](#) includes USM's definitions of Sexual Assault I and II verbatim.

GSGA34-R03**A Resolution Requesting Changes to the University of Maryland Sexual Misconduct Policy**

Summary: A resolution calling on the University of Maryland to revise the language in the Sexual Misconduct Policy to include adequate and non-duplicative descriptions of sexual misconduct acts.

WHEREAS, the University of Maryland's top priority should always be the physical, mental, and emotional safety of our community; and

WHEREAS, the Sexual Misconduct Policy previously approved by the University Senate includes language defining Sexual Assault I (Non-Consensual Sexual Intercourse) and Sexual Assault II (Non-consensual Sexual Contact); and,

WHEREAS, the current interim University of Maryland policy on sexual misconduct defines sexual assault as pertaining to penetration only; and,

WHEREAS, the definition included in the interim policy for sexual contact is vague and includes behaviors that is defined by the University System of Maryland policy as Sexual Assault; and,

WHEREAS, recent press about the interim policy has indicated that this change is to protect students accused of sexual misconduct; and,

WHEREAS, the revised policy appears to prioritize mitigating potential long term consequences for perpetrators over the importance of keeping every member of our community safe; and,

WHEREAS, the duty of the University should be focused on protecting victims and survivors of sexual misconduct;

THEREFORE, BE IT RESOLVED THAT the Graduate Student Government encourages the President to change University policy to consider both Non-Consensual Sexual Intercourse and Non-Consensual Sexual Contact as distinct forms of Sexual Assault.

Author(s): Jessica Bennett, Vice President of Academic Affairs (HESI)
Rebecca Alt, Assembly Representative (COMM)

Sponsor(s): Dirk Parham, Vice President for Legislative Affairs (ANTH)

45 **Date and Time of Submission:** 25 November, 2014

46

47 **Date of Presentation:** 5 December, 2014

48

49 **Action(s) Taken:**

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51

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Decision of GSG President

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Signature of GSG President

Date

An Act Recommending Changes to the University of Maryland Interim Sexual Misconduct Policy

S 15-03-25 E

1. WHEREAS, the Student Government Association (SGA) represents all undergraduate students at the University of Maryland, College Park (UMCP); and,
2. WHEREAS, the SGA serves as the voice for all undergraduate students at the University of Maryland UMCP; and,
3. WHEREAS, the University of Maryland recently implemented an interim sexual assault policy with significant changes to the old policy; and,
4. WHEREAS, the University Senate committee on Equity, Diversity, and Inclusion (EDI) is reviewing changes to the interim policy; and,
5. WHEREAS, the EDI committee will consider changes to the interim policy in its recommendation to the whole Senate; and,
6. WHEREAS, sexual misconduct is prevalent at many universities with between 20 and 25 percent of women have been victims of rape and attempted rape; and,
7. WHEREAS, the changes to the sexual misconduct policy accord for better ways to mitigate and respond to sexual misconduct on campus; and,
8. WHEREAS, concerns developed over categorization and definitions in the interim policy; and,
9. WHEREAS, the University has asked the campus community to give feedback and recommend changes to the interim policy.
10. THEREFORE, BE IT ENACTED the SGA endorses the University of Maryland's interim sexual misconduct policy with modifications; and,
11. BE IT FURTHER ENACTED the SGA strongly recommends changes to the sexual misconduct policy [see addendum A] to the EDI committee; and,

President:

Patrick Ronk