



Technical Revisions to the University of Maryland Non-Discrimination Policy and Procedures

PRESENTED BY	Reka S. Montfort, Executive Secretary & Director
REVIEW DATES	SEC – September 25, 2020 SENATE – October 7, 2020
VOTING METHOD	In a single vote
RELEVANT POLICY/DOCUMENT	VI-1.00(B) – University of Maryland Non-Discrimination Policy & Procedures
NECESSARY APPROVALS	N/A

ISSUE

On August 14, 2020, the President approved an interim University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct ([VI-1.60\[A\]](#)) to comply with the Department of Education’s Office of Civil Rights’ new Title IX regulations that require all higher education institutions to be in compliance by August 14, 2020. The University System of Maryland (USM) revised its the University System of Maryland Policy on Sexual Harassment ([VI-1.60](#)) in July 2020. All system institutions were tasked with revising their policies to align with the USM policy and the new Title IX regulations by August 14, 2020. The interim policy and procedures was approved by President Pines pending Senate review ([Senate Document #20-21-03](#)) and ([Senate Document #20-21-08](#)).

As a result of the revisions, the name of the Sexual Misconduct Policy was changed so all references to the previous name in other University policies must be updated. The proposed technical amendments to the University of Maryland Non-Discrimination Policy & Procedures ([VI-1.00\[B\]](#)) reflect the updates to the name of the Sexual Misconduct Policy and updates to a few additional references of University policies and policy links for consistency.

RECOMMENDATION(S)

The technical revisions are provided for informational purposes.

COMMITTEE WORK

N/A

ALTERNATIVES

N/A

RISKS

N/A

FINANCIAL IMPLICATIONS

N/A



VI-1.00(B) UNIVERSITY OF MARYLAND NON-DISCRIMINATION POLICY AND PROCEDURES

(Approved on an Interim Basis October 1, 2015; Amended March 22, 2016; Amended and approved by the President May 6, 2016; Amended May 2, 2018; **Technical amendments approved by the President effective August 14, 2020**)

I. POLICY STATEMENT

The University of Maryland is committed to creating and maintaining an educational, working, and living environment that is free from discrimination and harassment. This Policy prohibits discrimination on grounds protected under Federal and Maryland law and Board of Regents policies. University programs, activities, and facilities are available to all without regard to race, color, sex¹, gender identity or expression, sexual orientation, marital status, age, national origin, political affiliation, physical or mental disability², religion, protected veteran status, genetic information, personal appearance, or any other legally protected class. Retaliation against any individual who files a complaint or participates in an investigation under this Policy is strictly prohibited. In furtherance of the University's commitment to equal opportunity, this Policy and associated procedures are established to address and remedy complaints of discrimination, harassment, and retaliation based on a protected class.

The **Office of Civil Rights & Sexual Misconduct (OCRSM)** shall receive all complaints of discrimination and harassment made pursuant to this Policy. Complaints may also be filed online using the **Discrimination Complaint Form at <https://www.ocrsm.umd.edu/discrimination/index.html>**.

Office of Civil Rights & Sexual Misconduct (OCRSM)

University of Maryland
4113 Susquehanna Hall
4200 Lehigh Road
College Park, MD 20742-5031
E-mail: civilrights@umd.edu

¹ ~~Complaints based on sexual misconduct will be addressed under the University's Sexual Misconduct Policy & Procedures VI-1.60(A) as appropriate.~~ Complaints of discrimination based on sex, **gender identity** or **gender expression, and sexual orientation** that do not involve misconduct of a sexual nature will be addressed under this Non-Discrimination Policy **and Procedures (Non-Discrimination Policy). Complaints based on sexual misconduct will be addressed under the University of Maryland Policy and Procedures on Sexual Harassment and Other Sexual Misconduct (VI-1.60[A]) (Sexual Misconduct Policy), as appropriate. When the Title IX Officer determines based on its initial assessment, or following a mandatory or permissive dismissal, that the alleged sexual misconduct would not constitute a potential violation under the Sexual Misconduct Policy if substantiated, the Title IX Officer may refer the report to this Non-Discrimination Policy, as appropriate.**

² The University's policy and procedures for requesting disability accommodations may be found in the ~~VI-1.00(D)~~ University of Maryland Disability & Accessibility Policy and Procedures **(VI-1.00[D])**. Complaints of discrimination on the basis of disability may be made under this Non-Discrimination Policy.

II. APPLICABILITY

This Policy applies to members of the University community, including students, trainees, faculty, staff, and certain third parties (e.g., visitors, volunteers, applicants for admission or employment, vendors, and contractors) while on University property or while participating in University sponsored activities who either carry out discrimination or are subject to it.

This Policy applies to discrimination, harassment, or retaliation:

- on University premises, in any University facility, or on University property; and/or
- at any University sponsored, recognized, or approved program, visit, or activity, regardless of location; and
- 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.

III. DEFINITIONS

“Discrimination” is unequal treatment based on a legally protected status that is sufficiently serious to unreasonably interfere with or limit an individual’s opportunity to participate in or benefit from a University program or activity, or that otherwise adversely affects a term or condition of the individual’s employment or education.

“Harassment” is a form of discrimination (as defined above) that encompasses unwelcome conduct based on a person’s protected status. Harassment is severe or pervasive conduct that negatively affects the particular individual and also would negatively affect a reasonable person under the same circumstances. Harassment in violation of this Policy depends on the totality of the circumstances, including the nature, frequency, and duration of the conduct in question, the location and context in which it occurs, and the status of the individuals involved. Harassing behaviors may include, but are not limited to, the following, when based on a person’s protected status:

- conduct, whether verbal, physical, written, graphic, or electronic that threatens, intimidates, offends, belittles, denigrates, or shows an aversion toward an individual or group;
- epithets, slurs, or negative stereotyping, jokes, or nicknames;
- written, printed, or graphic material that contains offensive, denigrating, or demeaning comments, or pictures; and
- the display of offensive, denigrating, or demeaning objects, e-mails, text messages, or cell phone pictures.

“Personal appearance” means the outward appearance of any person irrespective of sex with regard to hairstyle, beards, or manner of dress. It shall not relate, however, to the requirement of

cleanliness, uniforms, or prescribed attire when uniformly applied for admittance to a public accommodation or a class of employees for a customary or reasonable business-related purpose.

“**Retaliation**” refers to action that is taken against an individual because they reported discrimination, filed a complaint of discrimination, or participated in an investigation or proceeding concerning a discrimination complaint.

IV. COMPLAINT PROCEDURES

Generally, a complaint filed under another University policy ~~or Maryland statute~~ cannot also be addressed under this Policy. Students, staff, and faculty must choose between the different complaint processes available to them.

A. Reporting

Individuals who experience violations of this Policy are encouraged to promptly file a complaint with the OCRSM or bring it directly to the attention of their supervisor.

Supervisors, faculty, and University administrators who receive or become aware of a complaint of conduct in violation of this Policy are encouraged to report it to the OCRSM. This does not apply to confidential resources on campus, such as the University Counseling Center, Health Center, Mental Health Services, and University Chaplains.

B. Timeliness

Complaints must be made within ninety (90) business days of the incident(s). The OCRSM may waive the time limit upon a showing of good cause.

C. Initial Assessment

Written complaints are encouraged, but not required. If a verbal complaint is made, the OCRSM will prepare a written statement of the allegations and the Complainant will be required to acknowledge its accuracy in writing. The OCRSM will acknowledge receipt of the complaint by sending a notification letter or contacting the Complainant directly within five (5) business days of receipt. The OCRSM will then conduct an initial assessment of the complaint to determine whether the complaint should be investigated, and will consider the Complainant’s request that the complaint be investigated or not investigated. The OCRSM will then notify the complainant whether:

- the complaint is appropriately filed with the OCRSM and the OCRSM has jurisdiction over the alleged conduct and the Respondent;
- the complaint has previously been filed under another University policy ~~or Maryland statute~~;
- the complaint is suitable for alternative resolution; and
- the allegations, if true, would constitute a Policy violation.

If it is determined that the complaint is not appropriately filed with the OCRSM, the Complainant will be informed of the reason.

D. Alternative Resolution Process

When determined appropriate by the OCRSM, the Complainant may elect to resolve a complaint through Alternative Resolution. The purpose of Alternative Resolution is to resolve the complaint by conference and conciliation. The OCRSM will notify and advise supervisors and other administrators, as appropriate, of the complaint and efforts by the parties to proceed with Alternative Resolution. The OCRSM shall document efforts to resolve the complaint and whether or not those efforts were successful. When Alternative Resolution is successful, the OCRSM shall summarize the resolution in writing, have it signed by the parties, and provide signed copies to the respective parties and supervisors and administrators, as appropriate. The OCRSM will also monitor implementation of the resolution agreement and/or close the case. When Alternative Resolution does not succeed within forty-five (45) business days of the date the complaint is filed, the OCRSM will cease that process and begin the investigation process.

E. Investigation

When the Initial Assessment or a failure of the Alternative Resolution process results in a determination that the OCRSM will investigate the complaint, the OCRSM shall advise the Complainant and Respondent of their rights under this Policy, including the following:

- both parties have a right to an impartial investigation;
- both parties have a right to produce relevant documents, witnesses, and other material they would like the investigation to include; and
- both parties may have an advisor of their choice present to provide advice during the investigative interview; however, the advisor may not speak or act on behalf of the party.

The OCRSM will assign an investigator³ who will conduct an adequate, reliable, and impartial investigation of the complaint. The investigator will interview the Complainant and the Respondent and any other available relevant witnesses, and review available relevant documents.

1. Standard of Review

In making the determination of whether a Policy violation has occurred, the standard of review is “preponderance of the evidence,” which means it is more likely than not that a Policy violation occurred.

³ An investigator in the OCRSM, for purposes of state employment regulations, is also considered to be the Fair Practices Officer.

2. Expectation of Cooperation

Absent good cause, all parties and identified witnesses shall cooperate during the investigation by being available during reasonable business hours to discuss the complaint and by making available any relevant information requested by the investigator.

3. Investigation Timeline

The OCRSM seeks to complete an investigation within sixty (60) business days and may extend the time frames set forth in this Policy for good cause. Exceptions to this timeframe may vary depending on the complexity of the investigation, access to relevant parties, and the severity and extent of the alleged discrimination.

4. False Information

Anyone who knowingly files a false complaint under this Policy or who knowingly provides false information to the OCRSM during an investigation will be subject to appropriate disciplinary action.

5. Written Investigation Report and Findings

The OCRSM shall complete a written report of its investigation, including a summary of the allegations, evidence reviewed and witness statements, findings of material fact and an analysis of those facts, and a conclusion stating whether the Policy was violated, based on the preponderance of evidence standard. The OCRSM then will issue a *Notice of Findings* and/or provide a copy of the investigation report to the parties and to the appropriate supervisors or department/unit heads, or the Office of Student Conduct, depending on the status of the parties. Copies of the investigation report may be redacted to comply with applicable law.

V. APPEAL

The Complainant and/or Respondent may appeal the investigation finding within five (5) business days of the date of receipt of the *Notice of Findings* by submitting to the OCRSM at civilrights@umd.edu a written statement of their intent to appeal and the stated grounds. The scope of the appeal is limited to the grounds set forth below. Mere dissatisfaction with the finding is not a valid basis for appeal. If an appeal is received by the OCRSM, the other party will be notified and given five (5) business days from the date of receipt of that notice to respond by submitting a written statement to the OCRSM at civilrights@umd.edu. All appeals and responses shall include the case name, number, and the party's name and contact information. Appeals filed by more than one party will be considered together in one appeal review process. All appeal documents submitted by a party will be shared with the other party.

If neither party submits an appeal, the decision will be considered final five (5) business days after the last date either party received the *Notice of Findings*. Appeals submitted after five (5) business days shall be denied, except upon a showing of good cause.

A. Grounds for Appeal

Either party may appeal the Finding only on the following grounds:

1. Substantial Procedural Error

Procedural errors or errors in interpretation of University policy were so substantial as to effectively deny a Complainant or Respondent notice or a fair opportunity to be heard.

2. New Evidence

New relevant, material evidence that a reasonably diligent person could not have discovered prior to the issuance of the *Notice of Findings* has become available.

B. Review

The appealing party has the burden of proof, and the standard of proof is preponderance of the evidence. Appeals are not intended to allow for a review of the entire investigation, with the exception of new evidence, as referenced above. The appellate review will be based on the written record; parties are not entitled to a hearing or meeting with the reviewing administrator or designee.

Appeals will be reviewed in accordance with the Respondent's status as listed below:

- appeals involving a Staff Respondent shall be reviewed by the Vice President for Administration & Finance or designee;
- appeals involving a Faculty Respondent shall be reviewed by the Senior Vice President and Provost or designee;
- appeals involving a Student Respondent shall be reviewed by the Vice President for Student Affairs or designee;
- appeals that do not directly involve a faculty, staff, or student Respondent shall be reviewed by the Vice President for Administration & Finance or designee.

C. Outcome

Upon receipt of the appeal and response, the OCRSM will forward them to the respective Vice President's Office. Within five (5) business days, the Vice President will issue a written determination stating whether the Appeal was granted or denied, including a summary of its rationale (the "Appeal Outcome"). The Appeal Outcome shall either:

- affirm the Finding,
- overturn and Reverse Finding, or
- send the Case Back to the Special Investigator with specific directions to reconsider the Finding.

The decision of the Vice President or designee as set forth in the Appeal Outcome shall be final. The Vice President shall forward a copy of the Appeal Outcome to the OCRSM

via email to civilrights@umd.edu. The OCRSM will forward a copy of the Appeal Outcome to the parties and respective supervisor/unit head/department chair or dean/Director of Student Conduct as soon as possible.

VI. RECOMMENDATIONS FOR CORRECTIVE ACTION

The OCRSM may provide the appropriate Vice President, supervisor, and department chair dean with a *Recommendation for Corrective Action*. The final decision for determining and implementing any necessary corrective action shall remain the responsibility of the appropriate Vice President or designee. The Vice President or designee will notify the OCRSM within ten (10) business days of any corrective action that has been implemented.

The OCRSM is responsible for monitoring efforts to ensure that any ongoing violations of the Policy cease. In the event corrective action requires specific anti-discrimination training not readily available to the parties, the OCRSM will work with the supervisor and/or department/unit head to ensure training occurs as soon as feasible.

VII. DISCIPLINARY ACTION

A. Students

With respect to Student Respondents, the Director of the Office of Student Conduct (OSC) in accordance with the provisions of the Code of Student Conduct is responsible for imposing disciplinary action.

1. Discipline that impacts a student's status with the University includes: expulsion, suspension for a definite or indefinite period, and disciplinary probation for a definite or indefinite period. Expulsion, suspension, and disciplinary probation will be noted on a student's transcript. Disciplinary suspensions and expulsions are subject to the approval of the Vice President for Student Affairs.
2. Discipline that does not impact a student's status with the University includes but is not limited to: educational requirements, "no contact" orders, housing restrictions, community service, and disciplinary reprimand. Failure to comply with any of the sanctions listed above may result in further disciplinary action that could impact a student's disciplinary status with the University.

The OCRSM may provide other remedies, in consultation with the OSC, as appropriate. These remedies will identify reasonable long-term or permanent remedies to address the effects of the conduct on the Complainant, restore the Complainant's safety and well-being and maximize the Complainant's educational and employment opportunities. Remedies may also be identified to address the effects of the conduct on the University community.

Students may appeal discipline imposed as a result of a violation of this Policy in accordance with the Code of Student Conduct.

B. Staff

With respect to Staff Respondents, any disciplinary action or corrective measures will be imposed by the appropriate supervisor and unit head, in consultation with the Assistant Vice President for Human Resources, the Director of the OCRSM, and other relevant administrators, as needed. This may include the following:

- unit transfers;
- reassignment of duties;
- mandatory training;
- verbal reminders;
- written reminders/letters of reprimand;
- suspension without Pay;
- suspension pending charges of removal; and
- termination.

Staff may grieve discipline imposed as a result of a violation of this Policy in accordance with their respective grievance rights.

C. Faculty

With respect to Faculty Respondents, disciplinary action or corrective measures will be imposed by the appropriate supervisor and unit head, in consultation with the Office of the Senior Vice President and Provost, the Director of the OCRSM, and other relevant administrators, as needed. This may include the following:

- reassignment of duties;
- mandatory training;
- verbal reminders;
- written reminders/letters of reprimand;
- suspension with or without pay; and
- termination.

Faculty may grieve discipline imposed as a result of a violation of this Policy in accordance with their respective grievance rights.

D. Records Retention

The OCRSM will maintain the records relating to the investigation. The respective unit responsible for issuing any discipline will maintain any disciplinary records in accordance with the University's records retention schedule. The respective unit shall also provide a copy of the disciplinary records to the OCRSM.

VIII. EXTERNAL GOVERNMENT AGENCIES THAT ADDRESS DISCRIMINATION COMPLAINTS

Filing an employment discrimination complaint under this Policy or an alternative campus procedure does not preclude an employee from filing a complaint with the Maryland Commission on Civil Rights, the Equal Employment Opportunity Commission, or the Office for Civil Rights of the U.S. Department of Education.

Complainants who wish to file discrimination complaints that are not connected with the official functions of the University or not falling within the scope of this Policy, will be referred to appropriate University, County, State, or Federal agencies by the OCRSM.

Office for Civil Rights U.S. Department of Education

Philadelphia Office (Regional Office for Maryland)
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
Email: OCR.Philadelphia@ed.gov
Website: <http://www2.ed.gov/about/offices/list/ocr/index.html>

Maryland Commission on Civil Rights

Phone: 410-767-8600
Website: <http://mccr.maryland.gov/>

Equal Employment Opportunity Commission

Phone: 800-669-4000
TTY: 800-669-6820
Website: <https://egov.eeoc.gov/eas/>

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

Replacement for:

~~*Policy VI-1.00(B) University of Maryland Code on Equity, Diversity, and Inclusion*~~