



## University Senate TRANSMITTAL FORM

<b>Senate Document #:</b>	11-12-43
<b>PCC ID #:</b>	N/A
<b>Title:</b>	Review of the University of Maryland Policies and Procedures on Sexual Harassment
<b>Presenter:</b>	Cynthia Hale, Chair, Joint President/Senate Sexual Harassment Policies & Procedures Task Force
<b>Date of SEC Review:</b>	September 25, 2013
<b>Date of Senate Review:</b>	October 10, 2013
<b>Voting (highlight one):</b>	On resolutions or recommendations one by one, or In a single vote To endorse entire report
<b>Statement of Issue:</b>	In June 2012, the Joint President/Senate Sexual Harassment Policies & Procedures Task Force (SHTF) was charged with reviewing the University of Maryland policies and protocols on sexual harassment and determining whether and how they could be improved to comport with prevailing best practices. Sexual harassment is a form of sex discrimination, prohibited under federal and state law. Sexual harassment is a broad term, which encompasses other forms of sexual misconduct, including sexual assault. The SHTF uses the term sexual misconduct to encompass sexual harassment, sexual assault, and other forms of sexual misconduct.
<b>Relevant Policy # &amp; URL:</b>	VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment <a href="http://www.president.umd.edu/policies/vi120a.html">http://www.president.umd.edu/policies/vi120a.html</a>  VI-1.30(A) University of Maryland Procedures on Sexual Assault and Misconduct <a href="http://www.president.umd.edu/policies/vi130a.html">http://www.president.umd.edu/policies/vi130a.html</a>
<b>Recommendation:</b>	The SHTF recommends change in four areas: Policy, Procedures, Communication, and Training. A summary is provided below. The complete list of recommendations is included in the attached report.  <u>Policy:</u> In June 2013, the SHTF submitted interim recommendations to President Loh, which included a recommendation that the

current University policies of VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment and VI-1.30(A) University of Maryland, College Park Procedures on Sexual Assault and Misconduct be rewritten by the University's legal counsel. An interim policy has been created in consultation with the SHTF and is included at the end of the report for review by the Senate.

Procedures: The SHTF recommends the establishment of a Title IX Office, to be staffed by a full-time Title IX Coordinator. The Title IX Office should also have a carefully structured and defined network of campus citizens who will be trained and empowered to work with the Title IX Office in the receipt of complaints. The network should include at least one trained "deputy coordinator" in each major Division. A Title IX Investigator will also be housed under the Title IX Office.

Communication: The SHTF recommends an ongoing communication strategy that is effective and engaging across campus, to educate and inform individuals with respect to our policies, procedures, available resources, and key individuals who are prepared to assist with specific events and issues related to sexual misconduct. The strategy must be multi-dimensional with many different access points, including a strong and user-friendly website that is well maintained and updated routinely; printed materials which can be posted and distributed widely throughout campus; and special in-person events which will encourage engagement, communication and education on relevant issues.

Training: The SHTF recommends that a comprehensive educational and training program be developed regarding sexual misconduct. The goals of this program are (1) to educate all members of the University community about the realities of sexual misconduct and promote a safe and respectful campus climate, (2) to educate all members of the University community about our policies and procedures regarding sexual misconduct, and (3) to ensure that all members of the University community understand their legal and ethical obligations regarding the reporting of incidents of sexual misconduct. All University employees (including part time and temporary employees, as well as graduate assistants) should complete training within 90 days of their appointment, or as soon as is feasible. Undergraduate and graduate students should be required to be educated about issues of sexual misconduct, as well as the campus policies and procedures, to enhance their understanding of and sensitivity to the issues. Individuals who are

	<p>on campus and temporarily engaged in the work of the University (visiting faculty and researchers, visiting and exchange students, etc.) should also receive appropriate education and training.</p>
<p><b>Committee Work:</b></p>	<p>The SHTF began regular meetings during the summer of 2012. The SHTF consulted with representatives of the Office of Diversity Education and Compliance, the President’s Legal Office, and the Office of Student Conduct on the current procedures for handling cases of sexual harassment. The SHTF consulted with campus equity officers from various units to understand the current process more fully, and to review the consistency of interpretation of the policy and procedures used by the various units on campus. The SHTF spoke informally with numerous departments and units across campus in order to gather input and outlook on current practices and protocols, including how they receive and address complaints of sexual harassment.</p> <p>The President and SEC also suggested that the SHTF could engage an outside consultant to assist in the review of our existing policies and to advise on best practices at other universities. In October 2012, the SHTF engaged consultants to perform an external audit of the University policies and procedures regarding sexual misconduct, and provide advice and consultation regarding compliance with Title IX and other relevant legal authority.</p> <p>The SHTF organized a number of meetings for the consultants to speak with a broad cross-section of University employees, including many representatives from academic and administrative departments/units. The SHTF received the consultants’ final report at the end of the Spring 2013 semester and met with them in person on June 4, 2013 to discuss the consultants’ findings and recommendations.</p> <p>The SHTF reviewed sexual misconduct policies and procedures at other institutions to determine whether the scope of the policies at the University is comparable to policies elsewhere, and to identify any models or practices that the University might consider adopting. In particular, the SHTF considered training programs and communication methods that are in place at other universities.</p> <p>The SHTF also welcomed feedback from the University community regarding its charge via an online website, which was available for input from May 2, 2013 to June 2, 2013. The feedback collection process was announced at the May 2, 2013 University Senate meeting and was advertised via the FYI campus email listserv. The</p>

	<p>SHTF received and reviewed comments and suggestions that were received from the public.</p> <p>In order to allow for a full internal interview and research process, the SHTF requested an extension of its deadline for this important topic. The SEC approved an extension until October 11, 2013.</p> <p>During the summer 2013, the SHTF issued interim recommendations to President Loh and the SEC. The SHTF recommended that the University take several immediate interim steps to effect key improvements to its Title IX program compliance before the beginning of the 2013-2014 academic year. The President approved the interim recommendations on July 16, 2013. The three areas of interim recommendation included: (1) identifying an Interim Title IX Coordinator to immediately revise and enhance communications regarding sexual misconduct prior to the start of the Fall semester and to help facilitate the training pilot for incoming freshmen, (2) initiating a formal search for a new full-time, dedicated Title IX Coordinator and Title IX Investigator, and (3) directing the University Legal Office to initiate a review and re-write of the campus policies on sexual misconduct.</p> <p>The SHTF approved its final recommendations on August 7, 2013.</p>
<b>Alternatives:</b>	To not approve the recommendations, including the comprehensive recommended Policy on Sexual Misconduct, and risk being in non-compliance with federal regulations and guidance.
<b>Risks:</b>	There are no associated risks with the approval of this report and its recommendations.
<b>Financial Implications:</b>	Resources will be needed to fund the establishment of the Title IX Office and related procedural changes on campus, including the establishment of a required training program for students and employees.
<b>Further Approvals Required:</b>	Senate Approval, Presidential Approval

**Joint President/Senate**

**Sexual Harassment Policies & Procedures**  
**Task Force**

**Final Report**

**August 2013**

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# REPORT

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## INTRODUCTION

The Joint President/Senate Sexual Harassment Policies & Procedures Task Force (SHTF) was charged with reviewing the University of Maryland policies and protocols on sexual harassment and determining whether and how they could be improved to comport with prevailing best practices. Under federal and state law sexual harassment is considered a form of sex discrimination and is prohibited. Sexual harassment is a broad term, which encompasses other forms of sexual misconduct, including sexual assault. The SHTF uses the term *sexual misconduct* to encompass sexual harassment, sexual assault, and other forms of sexual misconduct.

The members of the SHTF commend the President and the Senate Executive Committee (SEC) for recognizing the importance of this issue and for commissioning the task force to undertake a review and develop recommendations with respect to our current policies and practices addressing sexual misconduct at the University of Maryland (the “University”).

It is the overarching opinion of the Task Force that the University’s policies and procedures should reflect our commitment to maintaining a safe and respectful campus climate for all. Our policies should be accessible and straight forward and in compliance with all relevant statutes and regulations. Our procedures should be clearly communicated, consistent, and sufficiently flexible to respond to unique circumstances. Training, for all constituents (staff, students, and faculty), should strive to define our institutional culture regarding prevention, education, and reporting.

## BACKGROUND INFORMATION

In June 2012, the President and SEC charged the SHTF with a review of the University of Maryland policy and protocols on sexual harassment. The University’s Policy and Procedures on Sexual Harassment (VI-1.20(A)) was last reviewed and updated in 2004. The SHTF began regular meetings during the summer of 2012.

The SHTF was asked to consult with representatives of the Office of Diversity Education and Compliance, the President’s Legal Office, and the Office of Student Conduct with respect to the current procedures for handling cases of sexual harassment. The SHTF was also asked to consult with campus equity officers from various units to understand the current process more fully, and to review the consistency of interpretation of the policy and procedures used by the various units on campus. In addition, the SHTF was tasked with reviewing the efficacy, frequency, and scope of the University’s sexual harassment training program and with collecting input from campus constituents. The President and SEC also suggested that the SHTF engage an outside consultant to assist in the review of our existing policies and to advise on

best practices at other universities. See Appendix 10 for a list of the specific tasks included in the charge from the SEC.

Beginning in August 2012, the SHTF launched a review of the current University policies and procedures regarding sexual misconduct.

At the present time, the University of Maryland has two separate policies pertaining to sexual misconduct (Appendix 1 and Appendix 2, respectively):

- VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment – Approved by the President August 1, 1991; Revised December 13, 2004

University policy VI-1.20(A) is consistent with the Board of Regents VI-1.20 University System Policy on Sexual Harassment, which substantiates that the University of Maryland System is committed to creating and maintaining an environment in which every individual can work and learn without being harassed.

- VI-1.30(A) University of Maryland, College Park Procedures on Sexual Assault and Misconduct – Approved by the President April 17, 1995; Amended June 6, 2012

University policy VI-1.30(A) is consistent with the Board of Regents VI-1.30 University of Maryland System Policy on Sexual Assault and requirements of (i) Section 484 (f) of the Higher Education Act of 1965, as amended by section 486 (c) (2) of the Higher Education Amendments of 1992, and (ii) Section 11-601 of the Education Article of the Annotated Code of Maryland.

Under current policy, faculty, staff, and students at the University may report a sexual harassment complaint to a number of offices or individuals, including the Office of Diversity Education and Compliance, the Campus Compliance Officer, department/unit or college/school equity offices, campus ombudspersons, any administrator or faculty member including supervisors, chairs, and deans, University Human Resources, the Office of Legal Affairs, or the Office of Student Conduct.

An individual who reports a sexual harassment complaint (complainant) has two options for resolution or investigation of sexual harassment complaints: an Informal Complaint Procedure and a Formal Complaint Procedure. The Informal Complaint Procedure is intended to be flexible; it has no specific steps, time limits, or other prescribed requirements. With the Informal Complaint Procedure, an administrator or supervisor, the Campus Compliance Officer, or Legal Counsel may conduct the review and/or investigation. The Formal Complaint Procedure involves long-standing structured procedures established by law and University policy. Each Formal Procedure has its own specific steps, time limits, and other requirements. Depending on the status of the complainant, the review and/or investigation process may be prescribed by the *Code of Equity, Diversity, and Inclusion* (for students, staff, and faculty), the *Faculty Grievance Procedure* (for faculty), the *Grievance Policy for Exempt and Non-Exempt Staff* (for staff), or the *Code of Student Conduct* (for students).



The person or office that receives the complaint is expected to consult with Legal Counsel and/or the Campus Compliance Officer. The person or office receiving the complaint must also ensure that the complainant receives and understands the policy, and then speak with the complainant again to learn which process (formal or informal) the complainant wishes to use.

### Impact of 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.

Federal law requires the designation of a Title IX Coordinator to monitor and oversee the University's overall implementation of Title IX compliance. In April 2011, the Office Civil Rights, Department of Education 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 (see Appendix 4 for a copy of the April 2011 "Dear Colleague" letter and a relevant fact sheet). In reauthorizing the Violence Against Women Act (VAWA), Congress also imposed additional requirements regarding sexual misconduct protocols on university campuses, which take effect in Spring 2014 (see Appendix 5 for a summary of the additional requirements).

The immediate need to improve Title IX sexual misconduct program compliance, meet new requirements as a result of the reauthorization of VAWA, and improve campus safety, highlight an immediate need for the University to elevate the role of its existing Title IX Coordinator. The core duties and responsibilities of a Title IX Coordinator, as set forth in federal regulations (and as interpreted by DOE guidance) include:

- Monitoring and oversight of the university's overall implementation of Title IX compliance.
- Notification, prevention and education of the campus community regarding: (1) Title IX rights and responsibilities, focusing on prohibitions against sexual harassment, sexual assault, and sexual misconduct, (2) relevant university policies, including the processes for filing complaints for purposes of investigation and resolutions, (3) reporting options available both on and off campus, and (4) the existence of available resources, including the health center, counseling center, and rape crisis center.

- Coordinate training for the campus community, which includes: (1) students, faculty, and staff, (2) “responsible employees”/“first responders” who receive complaints, (3) investigators and adjudicators of complaints, and (4) campus law enforcement officers who deal with victims’ rights under Title IX, including the right to file Title IX sexual misconduct complaints for investigation and resolution by the university in addition to making a criminal complaint.
- Coordinate the receipt, investigation, and disposition of complaints of alleged sexually discriminatory behavior in violation of Title IX, other federal or state law, or university policies.
- Maintain records and data, issue annual reports, and note trends to enhance Title IX compliance and promote campus safety.

### **TASK FORCE RESEARCH AND FINDINGS**

In addition to our review of existing policy and emerging federal requirements, the SHTF members reviewed sexual misconduct policies and procedures at other institutions to determine whether the scope of the policies at the University is comparable to policies elsewhere, and to identify any models or practices that the University might consider adopting.

In particular, the SHTF members considered the training programs and communication methods that are in place at other universities. The members of the SHTF separated into three working groups to examine peer institutions.

The institutions included in the review were:

- University of Michigan
- University of Illinois
- University of California, Los Angeles
- University of California, Berkeley
- University of North Carolina, Chapel Hill
- University of Iowa
- Amherst College
- University of Maryland, Baltimore

The SHTF members analyzed whether sexual harassment and sexual misconduct training is provided at these institutions, as well as whether it is mandatory or required of staff, faculty, students, and/or visitors. The SHTF members looked at how training and information is delivered to the campus community, what the training and information covers, how it is managed and tracked, and how the training and information is geared to the various constituencies on campus. The SHTF found that many universities have some form of required training sessions for faculty, staff, and/or students. The SHTF found that sexual misconduct training is more likely to be required of university employees than of students, but that most institutions have some form of standardized training in place that is available to everyone.

(Note: VAWA now mandates training regarding certain types of sexual misconduct for students and new employees. See Appendix 5). Many training sessions are provided both in-person and/or online, and some schools require that employees (including members of management, supervisors, faculty, and staff) must re-new their training after a set period of time.

As charged by the President and the SEC, the SHTF members looked at the efficacy, frequency, and scope of current sexual misconduct training at the University, and found that training opportunities vary across campus at the present time.

In addition, members concurrently examined websites and printed materials and communication strategies at other institutions to gain a comparison to what is currently available at the University.

Members of the SHTF also reviewed the understanding by the campus community of the existing policy and procedures and the consistency for handling complaints of sexual misconduct. The SHTF spoke informally with numerous departments and units across campus in order to gather input and outlook on current practices and protocols, including how they receive and address complaints of sexual harassment.

Finally, the SHTF welcomed feedback from the University community regarding its charge via an online website, which was available for input from May 2, 2013 to June 2, 2013. The feedback collection process was announced at the May 2, 2013 University Senate meeting and was advertised via the FYI campus email listserv. The SHTF received and reviewed comments and suggestions that were received from the campus community.

## **EXTERNAL AUDIT BY CONSULTANTS**

In October 2012, the SHTF engaged consultants to perform an external audit of the University policies and procedures regarding sexual misconduct, and provide advice and consultation regarding compliance with Title IX and other relevant legal authority. The consultants hired were Gina Smith and Leslie Gomez of the law firm Pepper Hamilton, LLP.

The consultants completed a review of the University's policies related to sexual misconduct. In order to fully assess the efficacy of those policies in practice, the consultants met with a broad cross-section of University employees, including representatives from academic and service departments/units, Office of Diversity, Equity and Compliance (ODEC), the Department of Public Safety, University Human Resources (UHR), the Office of Student Conduct, Department of Intercollegiate Athletics, the University Counseling Center, the University Legal Office, and the University Health Center's Sexual Assault Response Prevention Program (recently renamed as "CARE to Stop Violence" – CARE stands for Campus Advocates Respond & Educate) (SARPP/CARE). Meetings were arranged on campus for the consultants in November and December 2012, as well as in February and April 2013. In order to allow for a full internal interview and research process, the SHTF requested an extension of its deadline for this important topic. The SEC approved an extension until October 11, 2013.

The SHTF also asked the consultants to review policies, procedures, and practices of institutions comparable in size, scope, and character. These institutions included Ohio State University, the University of Michigan Ann Arbor, the University of Iowa, the University of North Carolina at Chapel Hill, the University of Virginia, the University of California at Los Angeles, and the University of Illinois. The consultants noted that there is no one approach to “best practices,” as every school is unique in its size, student-body composition, institutional values, governance, history, and culture. Thus, the consultants’ recommendations were designed to facilitate the institution’s compliance with the regulatory framework in the unique context of the University’s own structure, character, and resources.

The consultants focused on the following topics in their analysis, and provided summaries of how the above mentioned institutions function in each area: policy structure, role and placement of the Title IX Coordinator, role and structure of the investigator, coordination of on-campus investigatory process and criminal investigation, role of campus police, existence of informal and formal complaint processes, use of different procedures for different classifications of complainants, role of legal office, and provision of training.

The SHTF received the consultants’ final report at the end of the Spring 2013 semester. The consultants found that the University’s current policies and procedures met Title IX requirements at that time, but they also made a number of recommendations for improvement. The consultants’ recommendations seek to enhance the effectiveness of the University’s current procedures by centralizing the institutional response to sexual harassment and sexual misconduct and enhancing communication and training.

The SHTF met with the consultants on June 4, 2013 to discuss their findings and recommendations. The consultants also briefed the President’s Cabinet at that time.

Based on the consultants’ review of policy, procedures, and practices, they recommended that the University:

- Consider revisions to the University of Maryland Policy and Procedures on Sexual Harassment, VI-1.20(A) and University of Maryland Procedures on Sexual Assault and Misconduct, VI-1.30(A);
- Restructure the role of the Title IX Coordinator to create an independent Title IX Office with a full-time Title IX Coordinator and at least one full-time Title IX Investigator;
- Designate appropriate Deputy Title IX Coordinators to serve as liaisons for each distinct community within the University and consider creating a team approach to respond to reports of sexual misconduct;
- Implement consistent training and educational programming for all campus constituents.

Each of these broad recommendations was described in greater detail in the report provided to the SHTF and the President’s Cabinet. The SHTF took the report and recommendations under consideration in its overall review of this topic.

## TASK FORCE RECOMMENDATIONS

During the summer 2013, the SHTF issued interim recommendations to President Loh and the SEC. The SHTF recommended that the University take several **immediate interim steps** to effect key improvements to its Title IX program compliance before the beginning of the 2013-2014 academic year. The Interim Recommendations for Summer 2013 were approved by President Loh and can be found in Appendix 6.

The interim recommendations included:

- Appointing an Interim Title IX Coordinator to develop clear road maps for students, staff, and faculty that describe the relevant policies and procedures for initiating a complaint, as well as resources currently available to individuals who have experienced any type of sexual misconduct for the start of the Fall 2013 semester;
- Initiating a formal search for a new full-time, dedicated Title IX Coordinator and Title IX Investigator; and
- Directing the University Legal Office to initiate a review and re-write of the campus policies on sexual misconduct.

In addition to the interim steps that were recommended in June 2013, the SHTF makes the following recommendations for consideration by the President and University Senate in the areas of (1) Policy, (2) Procedures, (3) Communication, and (4) Training:

### I. Policy

The SHTF endorses the recommendation of our consultants, Smith and Gomez of Pepper Hamilton, who confirmed that the University's current policies satisfy legal requirements. (Note: the consultants' recommendation preceded the recent amendments to VAWA). The SHTF concurs that the array of relevant policies should be rewritten and combined as a new "Policy for Sexual Misconduct," which would substitute and replace the existing separate policies on sexual harassment and sexual assault. We recommend one comprehensive policy that would be more straightforward and accessible, easier to understand and follow, and provide a more consistent and balanced tone.

In June 2013, the SHTF recommended to the President that the rewrite of these policies begin immediately and be done under the purview of the University Legal Counsel, in consultation with other entities, as appropriate, so that the revisions could be presented to the President and Senate in Fall 2013. The University Legal Office drafted a revised umbrella policy during the summer of 2013. The revised umbrella policy is included at the end of this report. The SHTF recommends that the Senate and President accept and approve the revised policy for immediate implementation at the University. This policy should substitute and replace VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment and VI-1.30(A) University of Maryland, College Park Procedures on Sexual Assault and Misconduct.

## II. Procedures

The SHTF has concluded that the current procedures in place for reporting instances of sexual misconduct, for reviewing and investigating claims, and for achieving an appropriate resolution, are inconsistent and lack clarity. The SHTF recognizes that there are a number of units on campus that strive to address these situations equitably and carefully, and that knowledgeable, trained, and dedicated individuals staff these units. Nonetheless, the current procedures for investigation and resolution of faculty and staff complaints are too decentralized, allowing for investigation by a wide array of persons, not all of whom are consistently trained. As a result of the new requirements imposed by VAWA, however, persons who investigate and resolve certain types of complaints of sexual misconduct must receive specified training on an annual basis. As such, the SHTF, therefore, recommends several significant changes:

- A Title IX Office should be established and staffed by a full time professional coordinator who will be responsible for the oversight of all circumstances related to sexual harassment and misconduct involving students, staff, and faculty. This office should report to the President or to the Provost and should function with autonomy in the matter of investigating and resolving complaints.
- It is expected that the new Title IX Coordinator will work collaboratively with many campus entities and individuals, including the Vice Presidents, Associate Vice Presidents, Deans and Associate Deans, University Human Resources, the University Legal Office, the Department of Intercollegiate Athletics, the Office of the Dean for Undergraduate Studies, the Office of the Dean of the Graduate School, the Office of Faculty Affairs, the campus ombudspersons, the Office of Student Conduct, the Department of Public Safety, the Department of Resident Life, SARPP/CARE, etc., in order to create a collaborative environment that recognizes our complex organization and campus culture. The SHTF recommends that the Title IX Coordinator create an advisory board of key campus citizens.
- Because of the complexity of the evolving federal regulations on matters of sexual harassment and sexual misconduct, as well as State law, USM policies, collective bargaining concerns and other constraints, the SHTF recommends that the Title IX Coordinator have sufficient legal training and extensive experience in issues related to sexual misconduct.
- The SHTF recommends that the new Title IX office put in place a carefully structured and defined network of campus citizens who will be trained and empowered to work with the Title IX Office in the receipt of complaints, the investigation of certain types of complaints, as deemed appropriate for their investigation by the Title IX Coordinator, and the communication and explanation of University policies, options and resources to complainants and respondents, and data collection.

- At a minimum, this network should include one trained “deputy coordinator” in each major Division, although a broader network of deputies may be necessary. These individuals would be either faculty or staff, whose duties would be enhanced by the status of “deputy Title IX coordinator.”
- In addition to the coordination of complaints, investigations, and resolutions, the Title IX Coordinator will oversee campus-wide education and training; coordinate communication of University procedures and resources through a wide array of media and relevant programming; and be responsible for implementing and maintaining a database of complaints, including longitudinal information, which can be monitored and evaluated to enhance prevention efforts and address problem areas. The Title IX Coordinator should also ensure that the due process rights of respondents accused of sexual misconduct are also addressed in University procedures.
- The question of how aspects of Title IX, which do not directly involve sexual misconduct, such as gender representation on athletic teams, be addressed by the President and the Provost, in consultation with the Legal Office, when the Coordinator and Office are in place.
- During the summer of 2013, the SHTF recommended that a search for a permanent Title IX Coordinator begin as soon as practicable, and that while the search is underway a campus employee be appointed as an interim Title IX Coordinator, so that the University could begin immediately to enhance the communication of our procedures and resources, particularly to incoming students and new employees.

### **III. Communication**

As the members of the SHTF researched practices at other institutions and discussed their own experiences, perhaps no other issue raised more concern than the lack of a clear and reliable access to protocols and resources on campus to complainants who have experienced sexual misconduct.

The SHTF has concluded that an essential component of creating a safe campus environment is an ongoing communication strategy that educates and informs individuals with respect to our policies, our procedures, available resources and key individuals who are prepared to assist with specific events and issues relating to sexual misconduct.

To be effective and engage all parts of the campus, this strategy must be multi-dimensional with many different access points, including a strong and user-friendly website that is well maintained and updated routinely; printed materials which can be posted and distributed widely throughout campus; and special in-person events which will encourage engagement, communication and education on relevant issues. A bold communication strategy will be key to creating a campus culture of respect and responsibility and accountability for all members of the community.

- The SHTF recognizes the difficulty of accessing reliable information on the current University website and thus believes that it is essential that a comprehensive website be created to house a series of clear, user-friendly documents regarding the University's policies and resources addressing sexual misconduct. The website must clarify the paths available to individuals who are victims of harassment or assault and those who witness inappropriate behavior.
- Information regarding due process for those who are accused of sexual misconduct must also be provided.
- General information and resources for members of the campus community should also be provided, including, but not limited to pertinent contact information, details about training and educational programs, links to related policies and procedures, statements on retaliation and confidentiality, frequently asked questions, and additional resources. This information should be available in other places and in other formats and languages, as well, in order to inform individuals about our procedures and resources.

An individual who has experienced sexual misconduct should be able to easily access information that will provide definitions, explain reporting options, and address concerns about personal safety, confidentiality, and the procedures for the investigation and ultimate resolution of these events.

- The Title IX office will be responsible for coordinating the dissemination of this information through appropriate departments and offices. An array of media, which would include social network sites, special events offered on campus and through Fraternity/Sorority Life and in the residence halls, UNIV 100 courses, training through the SARPP/CARE program, new employee orientation, campus dialogues and forums, etc., should be considered.
- As part of the interim recommendations for the summer of 2013, the SHTF recommended that communication should be shared with incoming students either before they matriculate or as soon as they arrive on campus. The SHTF recommended that the interim Title IX Coordinator should work closely with the Marketing and Communications Office to develop effective documents, and with the Division of Information Technology (DivIT) to make sure that these documents are readily accessible on the campus website with only one or two clicks.

#### **IV. Training**

The members of the SHTF devoted considerable time to researching the various training practices and tools in place at other universities. The SHTF members discussed at length our own experiences with broad training initiatives at the University, and the recommendations of our consultants.



The SHTF also carefully considered a proposal (Senate Doc #12-13-40), which was submitted by an undergraduate student and relayed to the SHTF by SEC in January 2013. The SEC asked the SHTF to incorporate any actions related to this request into its final recommendations regarding training. The student's proposal called for mandatory training on sexual assault for all undergraduate students. (Note: This is consistent with the new requirements imposed by VAWA). See Appendix 9 for more information about this proposal.

The SHTF recommends that a comprehensive educational and training program be developed regarding sexual misconduct. The goals of this program shall be threefold: (1) to educate all members of the University of Maryland community about the realities of sexual misconduct and promote a safe and respectful campus climate, (2) to educate all members of the University of Maryland community about our policies and procedures regarding sexual misconduct, and (3) to ensure that all members of the University of Maryland community understand their legal and ethical obligations regarding the reporting of incidents of sexual misconduct.

#### Training and Education for University Employees

- The SHTF recommends that all University employees (including part time and temporary employees, as well as graduate assistants) complete training within 90 days of their appointment, or as soon as is feasible.
- Training and education should be accessible to all members of the campus community at no cost to the employee. The goal should be to inform and to transform. Employees should repeat the training at least every five years, and supervisors should have the ability to require more frequent training. Supervisors should be required to attend additional training to ensure their ability to monitor workplace climate and respond to situations effectively and equitably.
- The campus should consider the acquisition and or development of an on-line education and training system, similar to those used at comparable institutions, as one of possibly several training options. See Appendix 7 for examples of employee training programs at comparable institutions.

#### Training and Education for Students

- Undergraduate and graduate students should be required to be educated about issues of sexual misconduct, as well as the campus policies and procedures, to enhance their understanding of and sensitivity to the issues. This information and the related dialogues should be ultimately delivered in an array of mediums to engage the greatest number of students and impact the campus culture. For example, we recommend offering a mix of UNIV100 classes, residence hall activities, Fraternity/Sorority Life community events, on-line websites, publications, lectures and seminars, etc., with the goal that all students receive repeated and diverse types of education on the issue of sexual misconduct during their time at the University. The integration of these

dialogues and information should begin in Spring 2014 and continue under the coordination of the Title IX coordinator and staff in the Division of Student Affairs. See Appendix 8 for examples of student training programs at comparable institutions.

- Prior to their matriculation, admitted freshmen and transfer students, as well as their parents or guardians, should be given access to on-line training that will endeavor to increase their understanding and sensitivity to the issue of sexual misconduct at the University and provide them with information regarding our policies and procedures. Students should be required to complete this training by the end of their first semester at the University. We recommend that this begin in Summer 2014.
- A face-to-face training pilot (VIP: Violence Intervention and Prevention) for incoming undergraduate students was developed during the summer of 2013 for the Fall 2013 semester, under the direction of SARPP/CARE, working in close coordination with the Vice President for Student Affairs and the Provost. This pilot training will take place during the Fall 2013 semester. An evaluation of the training's impact will be conducted. As part of the interim recommendations that were submitted in June 2013, the SHTF recommended that the Interim Title IX Coordinator work with SARPP/CARE to facilitate the training pilot, communicate with relevant campus units and programs, and assess the pilot for possible expanded use.

#### Training and Education for Visitors/Guests of the University

- Individuals who are on campus and temporarily engaged in the work of the University (visiting faculty and researchers, visiting and exchange students, etc.) should also receive appropriate education and training. Organizations that assign employees to work on the campus, as contractors or consultants, should include in their contract with the University language that confirms that their employees are required to abide by our sexual misconduct policy.

#### Training and Education Responsibility

- Training should be coordinated by the Title IX Office to assure consistency and accuracy across the institution, and to implement revisions as legal opinions and circumstances require. Training offered by individual programs and units should be reviewed and coordinated by the Title IX Office. The Title IX Office should be charged with developing and delivering appropriate training and education for the different campus constituencies. It should also have adequate resources to reliably manage this process, and put into place adequate redundancies so that personnel changes will not impact the office's operation.
- The development and/or selection of a training vehicle and/or system, as well as its campus wide implementation, will be a complex process. We recommend that this process be under the leadership of the permanent Title IX Coordinator, who should

work in close collaboration with members of the campus community to identify a training vehicle(s) and/or system(s) that will creatively and effectively impact our faculty, staff, and undergraduate and graduate students.

- The Title IX Office should maintain a database that tracks which employees and students have completed training and when. The Title IX Office should have a process to notify the appropriate Vice President, Dean, or Director as to which employees have not completed training.
- The Title IX Office should monitor and evaluate the impact of this education and training on the campus climate. The Title IX Office should provide routine reports with regard to the number and location of reported cases of sexual misconduct, and should provide longitudinal data concerning the reported cases. This analysis should permit an evaluation of the effectiveness of the training and campus practices. The Title IX Office should monitor reported cases to proactively advise the President if there are specific areas (or individuals) of concern.
- In coordination with the Title IX Office, the responsibility for the enforcement of training of faculty and staff and the delivery of education for students should rest with the Vice Presidents, Deans, and Directors. When notified of an employee who is not in compliance with the training policy, those individuals will be expected to take action to enforce the policy.

## **IMPLEMENTATION IMPACT**

The following list, while not exhaustive, illustrates the individuals and units at the University of Maryland, College Park, which will be directly affected by the recommendations in the section above. It will be important for these entities to be involved with the communication and coordination of the implementation process.

- Deans and Associate Deans
- Department of Dining Services
- Department of Facilities Management
- Department of Fraternity and Sorority Life
- Department of Intercollegiate Athletics
- Department of Public Safety
- Department of Resident Life
- Department of Residential Facilities
- Division of Information Technology
- Division of Student Affairs
- Office of the Dean for Undergraduate Studies
- Office of the Dean of the Graduate School
- Office of Diversity Education and Compliance

- Office of Faculty Affairs
- Office of Student Conduct
- University Counseling Center
- University Equity Officers
- University Health Center & SARPP/CARE Program
- University Human Resources
- University Legal Office
- Vice Presidents and Associate Vice Presidents

## **CONCLUSION**

The members of the Task Force are grateful for the opportunity to work on this issue of critical importance, to research the policies and procedures and current practices, and to provide our best advice and recommendations.

We have been deeply affected by what we have learned and observed and are convinced that this is an urgent and critical issue that must be addressed to enhance the wellbeing of all members of the University of Maryland community, and advance the society at large.

We believe that our recommendations to transform our communication strategy, to provide innovative training, to revise our policies and invigorate our procedures will transform the campus climate and will positively impact the careers and lives of many.

We urge the President and the Senate to recognize the urgency of these recommendations and related implementation actions, not only to assure that the University will be in full compliance with current legal mandates, but more importantly to set an example for institutions of higher education across the country by creating a community where scholarship and creativity and innovation can thrive and faculty, staff, and students are valued, respected, and protected.

## **VI-1.20(A) UNIVERSITY OF MARYLAND SEXUAL MISCONDUCT POLICY**

(Approved by the President on an Interim Basis August 23, 2013 pending University Senate action)

### **POLICY STATEMENT**

The University of Maryland is committed to a working and learning environment free from sexual misconduct, including sexual harassment, sexual assault, intimate partner violence/abuse, sexual exploitation and sexual intimidation. 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 of sexual misconduct is the responsibility of all members of the University community. The University is committed to fostering a campus climate that is free from sexual misconduct through education and prevention programs, and procedures that promote prompt reporting and the timely, fair and impartial investigation and resolution of sexual misconduct cases. If reported and confirmed, the University will take all appropriate steps to eliminate sexual misconduct, prevent its recurrence and address its effects.

This policy describes prohibited conduct, explains what to do if you wish to make a complaint of sexual misconduct, sets forth the procedures to be followed for promptly and equitably investigating and resolving such complaints, and identifies available resources and educational programs.

### **APPLICABILITY**

This policy applies to 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:

- (a) on University premises;
- (b) at University sponsored activities;
- (c) that has an adverse impact on the education or employment of a member of the University community; or
- (d) otherwise threatens the health and/or safety of a member of the University community.

Sexual misconduct is 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 handle allegations of sexual misconduct in accordance with the provisions of the Sexual Misconduct Policy.

### **PROHIBITED CONDUCT AND DEFINITIONS**

Sexual misconduct, as defined in this policy, is prohibited. Sexual misconduct is a broad term that encompasses sexual harassment, sexual assault, sexual exploitation, sexual intimidation, and

relationship violence. In addition, this policy prohibits retaliation against anyone who files a complaint under this policy or participates in any investigation of a complaint.

Sexual misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can be committed by men or women, and can occur between people of the same or different sex.

Sexual misconduct may be 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 Assault”** as defined in University System of Maryland Policy VI-1.30 means

Sexual Assault I: By stranger or acquaintance, rape, forcible sodomy, or forcible sexual penetration, however slight, of another person’s anal or genital opening with any object. These acts must be committed either by force, threat, intimidation or through the use of the victim’s mental or physical helplessness of which the accused was aware or should have been aware.

Sexual Assault II: By stranger or acquaintance, the touch of an unwilling person’s intimate parts (defined as genitalia, groin, breast or buttocks, or clothing covering them) or forcing an unwilling person to touch another’s intimate parts. These acts must be committed either by force, threat, intimidation or through the use of the victim’s mental or physical helplessness of which the accused was aware or should have been aware.

**“Consent”** means a knowing, voluntary and affirmatively communicated willingness to 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, reasonable judgment. Consent may be expressed either by words or actions, as long as those words or actions create a mutually understandable permission regarding the conditions of sexual activity. It is the responsibility of the person who wants to engage in sexual activity to ensure that he/she has the consent of the other to engage in the activity.

- (a) 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.
- (b) Previous relationships, including past sexual relationships, do not imply consent to future sexual acts.
- (c) Consent to one form of sexual activity cannot automatically imply consent to other forms of sexual activity.
- (d) To give consent, one must be of legal age.
- (e) 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.
- (e) Consent cannot be obtained by use of physical force, threats, intimidating behavior or coercion. Coercion is unreasonable pressure for sexual activity. Coercive behavior differs

from seductive behavior based on the type of pressure used. When someone makes clear that he/she does not want sex, that he/she wants to stop, that he/she does not want to do certain things or that he/she does not want to go beyond a certain point, continued pressure can be coercive.

(f) If you have sexual activity with someone you know, or should know, is incapacitated, you are in violation of this policy. The relevant standard is whether a sober, reasonable person in the same position should have known that the other party was incapacitated and therefore unable to consent. Incapacitated, for purposes of this policy, means that the person's decision-making ability is impaired such that the person lacks the ability 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
- \* the influence of alcohol, drugs or medication, including Rohypnol, Ketamine, GHB, Burundanga, and other substances used to facilitate "date-rape" or "sexual misconduct".

**"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 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 or employment decision affecting that individual; or
  - (iii) such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance, or of creating an intimidating, hostile, or offensive educational or working environment.

Examples of Sexual Harassment:

In assessing whether a particular act constitutes sexual harassment, the standard shall be the perspective of a reasonable person within the University of Maryland community. The rules of common sense and reason shall prevail. Allegations of sexual harassment shall be judged with attention to the facts particular to the case and the context in which the alleged incident(s) occurred. The behavior does not need to be directed at or to a specific person, but may be generalized unwelcomed comments based on sex or gender stereotypes.

Sexual harassment can occur between equals (e.g., student to student, staff to staff, faculty member to faculty member) or between persons of unequal power status (e.g., supervisor to subordinate, faculty member to student, coach to student athlete, graduate student to undergraduate student, student leader to first-year student). Although most often committed by persons with greater power against those who appear to have less power, it can also be committed by a person with less power (e.g., student harassing faculty member).

It can be committed by or against an individual of any sex, gender identity, gender expression or sexual orientation.

Sexual harassment can include any or all of the following behavior, if pervasive and continuous, as well as others which are not listed:

- Harassment through public or private insult, sexually suggestive comments concerning a person's body or behavior, and sexual demands.
- Subtle or overt pressure to comply with sexual demands.
- Undue and unwanted remarks about another person's clothing, body, sexual activities, sexual preferences, or sexual orientation; unwelcome flirting, teasing, jokes, or gestures that are sexual in nature.
- Unnecessary touching, kissing, pinching, patting or brushing another's body or clothing.
- Unnecessary touching, kissing, pinching, patting, or indecent exposure of one's own private body parts.
- Unwanted communications of a sexual nature in writing, by telephone, computer or by other means.
- Requests or demands for sexual favors accompanied by implied or overt threats or promised rewards, e.g., grades, references or awards (for students) or assignments, promotions, discipline (for employees)
- Repetition of unwanted invitations for dates.

**“Sexual Exploitation”** means taking sexual advantage of another person without consent for one's own advantage or benefit or for the advantage or benefit of anyone other than the person being exploited. Examples, include, but are not limited to the following:

- (a) causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person;
- (b) causing the prostitution of another person;
- (c) electronically recording, photographing or transmitting identifiable utterances, sounds or images of private sexual activity and/or the intimate body parts (including genitalia, groin, breasts or buttocks) without the knowledge and consent of all parties involved ;



- (d) allowing third parties to observe private sexual acts of a participant without the participant's consent; and/or
- (e) voyeurism (spying on others who are in intimate or sexual situations).

**“Sexual Intimidation”** means:

- (a) threatening to sexually assault another person;
- (b) stalking, including cyber-stalking; or
- (c) engaging in indecent exposure.

“Stalking” means a course of conduct directed at a specific person because of his or her sex that is unwanted and unwelcome and that would cause a reasonable person to fear for his or her safety, security or well-being. Stalking includes repeated implicit or explicit harassing or threatening behaviors. Examples may include:

- following a person;
- appearing, or leaving messages or objects at a person's home, place of business, classroom, or other places a person is known to frequent;
- making harassing phone calls;
- sending messages by mail or electronic means, including emails or texts;
- vandalizing personal property.

**“Relationship Violence”** means:

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, a current or former boyfriend or girlfriend, or a current or former dating partner.

## **REPORTING PROCEDURES**

**Prompt reporting is encouraged.** Persons may report allegations of sexual misconduct at any time, but are encouraged to make reports promptly in order to maximize the University's ability to obtain evidence and conduct a prompt, fair and impartial investigation. Failure to promptly report alleged sexual misconduct may result in the loss of relevant evidence and witness testimony, and may impair the University's ability to respond and take appropriate action.

All reports of sexual misconduct will be taken seriously and investigated. The University strives to investigate and resolve all complaints within 60 days of the filing of a complaint. Actual resolution time may vary depending on the complexity of the investigation and the severity and extent of the alleged misconduct.

The University will make every effort to safeguard the privacy and identities of persons who seek help and/or report sexual misconduct. While steps will be taken to protect the privacy of such persons, the University may need to investigate an incident and take action once an allegation is known, whether or not the person chooses to pursue a complaint. The University adheres to all federal, state, and local requirements for intervention, crime reporting and privacy provisions relating to sexual misconduct.

**Who to Contact.** Complainants may report alleged sexual misconduct to a “Responsible University Employee,” which includes any university administrator, supervisor, faculty member, coach, trainer, or professional staff from the Department of Resident Life. Complainants may also report alleged sexual misconduct to the Title IX Coordinator or a Deputy Title IX Coordinator.

**Obligations of “Responsible University Employee.”** A Responsible University Employee who receives a complaint of sexual misconduct shall promptly report such complaint to the Office of the Title IX Coordinator or a Deputy Title IX Coordinator. No employee (other than law enforcement) is authorized to investigate or resolve complaints without the involvement of the Title IX Coordinator.

**Title IX Coordinator**  
**2411 Marie Mount Hall**  
**University of Maryland**  
**College Park, MD 20742**  
**(301-405-2839)**  
**TitleIXCoordinator@umd.edu**

**The Office of the Title IX Coordinator** is responsible for ensuring that the complainant:

- receives a copy of the sexual misconduct policy
- is advised of the option to notify law enforcement
- is advised about the internal administrative investigative process
- is advised that the University may need to investigate and take action even if the complainant wishes not to proceed with an administrative investigation
- is advised of available interim measures
- is advised about available services on campus and in the community for counseling, health, mental health, victim advocacy, and legal assistance

**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 because of the threat of disciplinary sanctions for his or her own violation of the Code of Student Conduct. 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 *VI-1.00(J) University of Maryland Policy on Promoting Responsible Action in Medical Emergencies* at <http://www.president.umd.edu/policies/v100jnew.html>

**Criminal Reporting.** Because sexual misconduct may constitute both a violation of University policy and a crime, the University encourages persons to report incidents of sexual misconduct that are crimes under Maryland law to campus police or other appropriate law enforcement agencies. Representatives of the Office of the Title IX Coordinator, Office of Student Conduct and victim advocates at Campus Advocates Respond and Educate (CARE) to Stop Violence in the University Health Center are available to assist students in notifying campus police. Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. However, victims have the option to decline to notify law enforcement.

Upon receipt of a report of alleged sexual misconduct that may also constitute a crime, campus police will normally conduct a criminal investigation. Campus police can also assist sexual misconduct victims in notifying other law enforcement authorities in other jurisdictions, as appropriate. When

campus police receive a complaint of alleged sexual misconduct from a student, they will advise the student of his or her right to proceed with a University administrative investigation and resolution of the complaint under this policy.

Proceeding with a University administrative investigation and resolution 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 does not normally wait until a criminal investigation or proceeding is concluded before conducting its own investigation, implementing interim measures and taking appropriate action. 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 civil or criminal proceedings off campus.

**Interim measures available.** Reports of alleged sexual misconduct in violation of this policy may be supported by appropriate interim measures coordinated by the Office of the Title IX Coordinator. The University may provide interim measures prior to completion of its investigation. Interim measures may include the following:

- **For students:** Academic accommodations, alternative housing, alternative student employment. Both the complainant and the respondent may request the following accommodations, if appropriate:
  - change in on-campus housing location to alternate housing
  - assistance in exploring alternative housing off-campus
  - assistance in transferring to another section of a lecture or laboratory
  - assistance in arranging for incompletes, leaves or withdrawal from campus
  - assistance in arranging for alternate University employment arrangements
  - “no contact” directive pending the outcome of the investigation. Such a directive serves as notice to both parties that they must not have verbal, electronic, written or third party communication with one another
- **For faculty and staff:** Employment accommodations. Both the complainant and the respondent may request the following accommodations, if appropriate:
  - Temporary reassignment to other work duties and responsibilities, other work locations, other work groups/teams or other supervision/management
  - “no contact” directive pending the outcome of the investigation. Such a directive serves as notice to both parties that they must not have verbal, electronic, written or third party communication with one another

**Complaints against students** based on a violation of this policy will be reviewed in accordance with the **University’s Code of Student Conduct**, see <http://www.president.umd.edu/policies/docs/V-100B.pdf>. Complaints will be reviewed by the Office of Student Conduct, Division of Student Affairs, unless the alleged sexual misconduct occurred in or around the University Residence Halls, South Campus Commons or The Courtyards. In such cases, a complaint against student on-campus

residents will be reviewed by the Office of Rights and Responsibilities because of the additional possible violation of the terms of the student's housing agreement.

Under the University's Code of Student Conduct, both parties are given a number of important rights, including the right to pose questions to the other party, the right to be advised by an advisor of their own choice during any hearing or related meetings, the right to address the hearing board, the right to question witnesses and present evidence, the right to be informed of the outcome of the case, and the ability to appeal decisions made by the hearing board. The burden of proof is on the complainant, who must establish the responsibility of the student charged by a preponderance of the evidence standard (e.g., more likely than not). The proceedings shall be prompt, fair and impartial, and conducted by persons who receive annual training on sexual misconduct and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. The University will endeavor to complete the proceedings within sixty (60) days of receipt of the complaint, and shall notify the parties if the investigation cannot be completed in this timeframe. Strict limits are placed upon inquiries about the prior sexual history of the complainant. Witnesses, including the complainant, are expected to appear in person and may be subject to questioning by the accused. Sanctions for violation of this policy may include disciplinary probation, disciplinary reprimand, suspension and expulsion. Both parties are entitled to be informed of the outcome of any hearing based on a violation of this policy and have the same rights of appeal. The University shall not publically disclose personally identifiable information about either of the parties, except as required by law. Students who violate federal, state and/or local laws may also be subject to criminal charges.

**Complaints against employees (faculty and staff)** based on a violation of this policy will be coordinated and handled by the Office of the Title IX Coordinator. The Office of the Title IX Coordinator will interview the complainant to determine if the allegations, if true, constitute a violation of this policy, and, if so, who is the most appropriate person to investigate. While a written complaint is not required, complainants generally will be asked to submit a signed written complaint. Investigations and resolutions will be prompt, fair and impartial, and conducted by persons who receive annual training on sexual misconduct and how to conduct an investigation and hearing process, that protects the safety of victims and promotes accountability.

The investigator will endeavor to complete the investigation and generate a written report with findings on the allegations of sexual misconduct within sixty (60) days of the complaint, and shall notify the parties if the investigation and report cannot be completed in this timeframe. The findings shall be based on a preponderance of the evidence standard (e.g., more likely than not). The written report shall be reviewed by the University Legal Office for legal sufficiency. A copy of the report shall be provided to both parties and to the relevant supervisor and administrator. If either party objects to the findings, he/she shall have three (3) days to submit written comments. All written comments shall be made part of the record.

The relevant supervisor and administrator will consider the investigator's written report in determining appropriate disciplinary action, ranging from a written reprimand up to and including termination of employment, depending on the circumstances.

Supervisors and administrators must consult with the Office of the Title IX Coordinator and appropriate personnel in the Department of Human Resources and/or Office of Faculty Affairs in the course of determining the appropriate disciplinary sanction.

Disciplinary sanctions against faculty and staff based on a violation of this policy may be appealed based on grievance rights and procedures which depend on the status of the employee:

- **Faculty:** See *II-4.00(A) University of Maryland Policies and Procedures Governing Faculty Grievances* at <http://www.president.umd.edu/policies/ii400anew.html>
- **Exempt and Nonexempt Staff:** See *VII-8.00 USM Policy on Grievances for Exempt and Nonexempt Staff* at <http://www.usmh.usmd.edu/regents/bylaws/SectionVII/VII800.html> and *VII-8.10 Policy on Special Action Appeals for Classified Employees* at <http://www.usmh.usmd.edu/regents/bylaws/SectionVII/VII810.html>
- **Contingent I or II Exempt and Nonexempt Staff:** See *VII-1.40(A) University of Maryland Policy and Procedures on Contingent Employment for Staff Non-Exempt and Exempt* at <http://www.president.umd.edu/policies/vii140a.html>

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

**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 Office of the Title IX Coordinator or a Deputy Title IX Coordinator. After a review of the circumstances, the Title IX Coordinator may assist in referring the matter to law enforcement for review and appropriate criminal prosecution or request a formal letter be issued to the third party denying access to UM 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).

**Complaints of Retaliation.** Persons who commit retaliation in violation of this policy are subject to appropriate disciplinary action. Complainants or participants in any report or investigation of sexual misconduct who believe they have experienced retaliation in violation of this policy should immediately report such conduct to the Title IX Coordinator.

## **CONFIDENTIALITY**

The University recognizes that sexual misconduct allegations are a sensitive subject for all parties involved. The University is committed to maintaining the privacy of the parties involved to the fullest extent possible under applicable law. There may be instances when the University determines it needs to investigate and take reasonable action even when the complainant requests anonymity or requests that no action be taken. Thus, absolute confidentiality cannot be guaranteed. In such cases, the University will take all reasonable steps to investigate and respond to the complaint consistent with the complainant's requests, and when it cannot do so, will keep the complainant informed, as deemed appropriate. In all cases, the University will take care to protect the identities of the parties by discussing the allegations only with those who have a legitimate administrative or legal reason to know.

If a report of sexual misconduct discloses an immediate threat to the campus community, the University may issue a timely notice of the conduct in the interests of the health and safety of the campus community. This notice will not contain any personally identifying information related to the victim.

The University 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.

**To Report Confidentially.** If a person desires to keep the details of an incident of sexual misconduct confidential, he/she should speak with individuals who have professional or legal obligations to keep communications confidential. When seeking advice and support, persons who are concerned about confidentiality should discuss their concerns about confidentiality with the person with whom they are speaking. Unless there is an imminent threat to health or safety, or other basis for disclosure pursuant to law, confidentiality applies when persons seek services from the following persons:

- A psychological counselor or other mental health professional, including counselors at the University Counseling Center (301-314-7651) and mental health professionals at the University Health Center (301- 314-8106)
- A health care provider, including medical professionals at the University Health Center (301-314-8184 for appointments)
- A victim advocate at Campus Advocates Respond and Educate (CARE) to Stop Violence at the University Health Center (301-314-2222) 24 hours Crisis Cell (301-741-3442)
- A personal attorney, including an attorney in the University's Undergraduate Student Legal Aid Office (301-314-7756) or Graduate Student Legal Aid Office (301-405-5807).

## **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 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 supervisors*** of those relationships in order that such 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.

## **PERSONS ACCUSED OF SEXUAL MISCONDUCT**

Allegations of sexual misconduct are extremely serious, with potential for great harm to the accused if ill-conceived or made with malice. The University is committed to protecting the rights of the accused as well as the complainant. An individual found to have deliberately filed a false accusation may be subject to separate appropriate disciplinary action. A complaint made in good faith is not considered false merely because the evidence does not ultimately support the allegation of sexual misconduct.

Persons accused of sexual misconduct will be treated with fairness and respect. The University will ensure that its investigations and disciplinary proceedings are conducted in accordance with principles of due process.

Such proceedings shall provide a prompt, fair, and impartial investigation and resolution, and will be conducted by persons who receive annual training on the issues related to sexual misconduct and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

A person accused of sexual misconduct will be informed that a complaint has been made, told the specific allegations, provided with a copy of this policy, and informed of available counseling and other resources.

The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding, including the opportunity to be accompanied to any proceeding or related meeting by an advisor of their choice.

Both the accuser and the accused will be informed simultaneously in writing of the following:

- the outcome of any disciplinary proceeding
- appeal rights, if applicable
- how the institution will protect the confidentiality of the accused and accuser and how public records will be kept without the inclusion of personally identifiable information, to the extent permissible by law

## **STEPS TO TAKE FOLLOWING A SEXUAL ASSAULT**

**Stay Warm and Do Not Clean Up.** Persons who experience sexual assault may be in a state of shock. A victim is advised not to wash or clean up, but 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 CARE advocate or mental health professional at the University Health Center can help you make better decisions about what to do. Whether you decide to go to law enforcement or not, it is extremely important to take care of your own emotional needs. Professional counseling can be beneficial as you work through your reactions.

**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 disease. A medical examination will also allow for the collection of physical evidence by way of a Sexual Assault Forensic Exam (SAFE), which will ensure that needed physical evidence is preserved in the event of a report to law enforcement. A SAFE can be obtained within 72 hours of an assault.

**Preserve Evidence.** Take 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 be placed in a paper bag and brought to the hospital. In order to avoid forgetting important details, write down the facts about the accused and the assault.

## **SAFETY AND SUPPORT RESOURCES**

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. The escorts are conducted by either the Student Auxiliary Police Aide or by a University Police Officer.

### **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.

### **Campus Advocates Respond and Educate (CARE) to Stop Violence, University Health Center Office (301-314-2222); 24 hours Crisis Cell (301-741-3442)**

This service is a free and confidential resource to provide 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.



**University Counseling Center (301-314-7651)**

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 Service offers a variety of services to help students, faculty, staff, and the community deal with issues concerning them.

**Campus Chaplains (301-405-8450 or 301-314-9866)** The Campus Chaplains represent fourteen faith communities and work collectively to serve the spiritual needs of all members of the University community.

**University Health Center, Mental Health Services (301-314-8106)** The Mental Health Service is staffed by psychiatrists and licensed clinical social workers and offers confidential services including short-term psychotherapy, medication evaluations, crisis intervention and group psychotherapy.

**University Health Center, Faculty Staff Assistance Program (301-314-8170 or 301-314-8099)**

The FSAP is available to all full and part-time employees for assessment, referral and in many instances, short-term counseling services at no cost.

**Student Legal Aid Office**

**Undergraduates (301-314-7756); Graduates (301-405-5897)**

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

**Office of Student Conduct, Division of Student Affairs (301-314-8204)** 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**

**(301-314-7598)** 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.

**Title IX Coordinator (301-405-2839)**

2411 Marie Mount Hall

University of Maryland

College Park, MD 20742

[TitleIXCoordinator@umd.edu](mailto:TitleIXCoordinator@umd.edu)

### **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.

### **Domestic Violence and Sexual Assault Center at Dimensions Healthcare System, Prince George's Hospital 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.

## **EDUCATIONAL AND TRAINING RESOURCES**

The University offers primary prevention and awareness programs designed to educate faculty, staff and students across the campus community about sexual misconduct with the goal of lowering the number of incidents of sexual misconduct on campus.

### **Campus Advocates Respond and Educate (CARE) to Stop Violence (301-314-8124)**

CARE provides workshops for students on topics such as sexual assault, relationship violence, bystander intervention and stalking through its Peer Education Program. CARE also provides professional presentations upon request.

### **University Department of Public Safety, Crime Prevention Unit (301) 405-3555**

A major function of the University Police is to provide crime prevention services to students, faculty and staff who live and work in our community. Many crime prevention programs are regularly available and/or may be scheduled.

### **Department of Fraternity and Sorority Life Sexual Assault Prevention Program (301-314-7172)**

The Department of Fraternity and Sorority Life employs a Sexual Assault Prevention coordinator who coordinates programming specifically for the Greek community related to prevention of sexual misconduct, including the Ten Man/Ten Woman Plan. The Ten Man/Ten Woman Plan program educates students in groups of 10 who meet weekly with a trained facilitator, and in turn, help to inform and guide decisions of other students in their chapter.

**Title IX Coordinator (301-405-2839)**

2411 Marie Mount Hall  
University of Maryland  
College Park, MD 20742  
TitleIXCoordinator@umd.edu

**EXTERNAL AGENCIES THAT ADDRESS SEXUAL MISCONDUCT**

Complaints of sexual misconduct may also be filed with the federal Equal Employment Opportunity Commission or the Maryland Commission on Civil Rights. 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.

Persons may also file complaints for violation of Title IX with the U.S. Department of Education, Office of Civil Rights.

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*

## APPENDICES

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**Appendix 1** – VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment (Approved by the President August 1, 1991; Revised December 13, 2004)

**Appendix 2** – VI-1.30(A) University of Maryland, College Park Procedures on Sexual Assault and Misconduct (Approved by the President April 17, 1995; Amended June 6, 2012)

**Appendix 3** – Title IX Education Amendments of 1972

**Appendix 4** – April 2011 “Dear Colleague” Letter and Fact Sheet

**Appendix 5** – Summary of amendments to the Clery Act, as set forth in the "Violence Against Women Reauthorization Act Of 2013"

**Appendix 6** – Interim Recommendations for Summer 2013

**Appendix 7** – Summaries of training approaches for employees at comparable institutions

**Appendix 8** – Summaries of training approaches for students at comparable institutions

**Appendix 9** – Memo from the SEC regarding the “Proposal to Mandate Sexual Assault Prevention Education for Students” (Senate Doc #12-13-40)

**Appendix 10** – Sexual Harassment Policies & Procedures Task Force (SHTF) Charge

VI-1.20(A) UNIVERSITY OF MARYLAND POLICY AND PROCEDURES ON  
SEXUAL HARASSMENT

APPROVED BY THE PRESIDENT 1 AUGUST 1991; Revised  
December 13, 2004

A. POLICY

UM is committed to maintaining a working and learning environment in which students, faculty, and staff can develop intellectually, professionally, personally, and socially. Such an environment must be free of intimidation, fear, coercion, and reprisal. Accordingly, the Campus prohibits sexual harassment. Sexual harassment may cause others unjustifiable offense, anxiety, and injury. Sexual harassment threatens the legitimate expectation of all members of the Campus community that academic or employment progress is determined by the publicly stated requirements of job and classroom performance, and that the Campus environment will not unreasonably impede work or study.

Sexual harassment by University faculty, staff, and students is prohibited. This constitutes Campus policy. Sexual harassment may also constitute violations of criminal and civil laws of the State of Maryland and the United States. For the purpose of this Campus policy, sexual harassment is defined as: (1) unwelcome sexual advances; or (2) unwelcome requests for sexual favors; or (3) other behavior of a sexual or gender-based nature where:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or participation in a University-sponsored educational program or activity; or
- b. Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting that individual; or
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance, or of creating an intimidating, hostile, or offensive educational or working environment.

In assessing whether a particular act constitutes sexual harassment forbidden under this policy, the standard shall be the perspective of a reasonable person within the College Park Campus community. The rules of common sense and reason shall prevail. Nothing in this policy limits expression protected under the First Amendment, campus freedom of expression, or similar policies. Allegations of sexual harassment shall be judged with attention to the facts particular to the case and the context in which the alleged incident(s) occurred.

Conduct prohibited under this policy may manifest itself in many different ways. Sexual harassment may, for example, be as undisguised as a direct solicitation of sexual favors, or solicitation accompanied by overt threats. Harassment may also arise from behavior that has the effect of creating an intimidating, hostile, or offensive educational or working environment. In this regard, the following types of acts, if pervasive and continuous, are most likely to result in allegations of sexual harassment: unwelcome physical contact; sexual remarks about a person's clothing, body, or sexual relations; conversation of a sexual nature or similar jokes and stories; and the display of sexually explicit materials in the workplace or used, without defensible educational purpose, in the classroom.

Sexual harassment may occur within a variety of relationships. It may occur among peers. It may occur where no relationship exists between the parties other than being co-employees or co-students. Especially injurious is harassment in relationships characterized by inequality of power, where one party has institutional authority over the other. Inherent in these relationships is the power and fear of reprisal. Typically, such relationships are found between employer and employee; senior faculty and junior faculty; graduate teaching assistant and undergraduate; and faculty and student, when the student is enrolled in a faculty member's class or when the student is in a continuing position to require evaluation of work or letters of recommendation from the faculty. Such relationships can be immediate or based upon future expectations, for example, the need for future evaluations and references. Sexual harassment may occur between persons of the same or different sex.

Education and awareness are the best tools for the elimination of sexual harassment. The Campus is committed to taking appropriate action against those who violate the provisions of the policy. The Campus is committed to protecting targets of harassment from retaliation.

## B. PROCEDURES

### 1. General Principles.

Preventing sexual harassment is a responsibility of the entire Campus community. The Campus has made this a priority, but ultimately, no satisfactory investigation or resolution of a complaint can occur without the initiative and continuous cooperation of the person who feels injured.

Similarly, allegations of sexual harassment are extremely serious, with potential for great harm to all persons if ill-conceived or without foundation. Procedures which implement Campus policy recognize the potential for harm. The Campus is committed to protecting the rights of the alleged offender as well as the offended.

### 2. Confidentiality.

All complaints of sexual harassment are to be kept confidential. This means that the complaint will be discussed only with those who have a legitimate administrative or legal reason to know about the complaint. Information related to a complaint also may be subject to disclosure as required by state or federal law.

### 3. Filing a Complaint.

An individual who believes he or she has been subjected to sexual harassment has several ways to bring this to the attention of the University, and, where proper, obtain redress or protection. There is an Informal Complaint Procedure (see Section 5). There are also Formal Complaint Procedures (see Section 6) sufficiently broad to deal with sexual harassment. These procedures are explained later in this Policy.

Faculty, staff and students may report an alleged incident of sexual harassment to:

- a. the Campus Compliance Officer, Office of Diversity & Inclusion (405-2839);
- b. a Departmental or College equity officer;
- c. any Campus or University official or faculty member, including the reporting individual's supervisor, the department chair or dean;
- d. the Director of University Human Resources (405-5648);
- e. the President's Legal Office (405-4945);
- f. In addition to the options listed above, students also may report an incident of sexual harassment to the Office of Student Conduct (314-8204).

### 4. Responsibilities of the Person Receiving the Complaint.

Any person who receives a complaint of sexual harassment shall not initiate any action to investigate or resolve the matter until he or she:

- a. explains that as a person receiving a report of sexual harassment, he/she must notify the Campus Compliance Officer or the Legal Office about the complaint. The Campus Compliance Officer and Legal Office will have a collaborative and information-sharing relationship regarding reports of sexual harassment. The purpose of contacting one of these offices is:

- i. to ensure that the receiving person communicates the necessary information to the complainant, (including giving the complainant a copy of the Sexual Harassment Policy)
  - ii. to determine what questions the complainant has about the Sexual Harassment Policy and procedures
  - iii. to advise who would most likely be the appropriate University Official to handle an Informal Complaint.
- b. speaks again to the complainant, after consulting with the Campus Compliance Officer and/or Legal Office. After the complainant has had the opportunity to raise any questions about the Sexual Harassment Policy and the Informal Complaint Process, the complainant will be offered the opportunity to decide which process to initiate.

#### 5. Informal Complaints.

The Informal Complaint Procedure is intended to be a flexible process so that each case may be handled according to the specific facts presented. The Informal Complaint Procedure has no specific steps, time limits or other prescribed requirements.

- a. Depending on the specific facts, an Informal Complaint may be reviewed or investigated by a supervisor or similar University official who has administrative authority over the person accused of harassment, or by the Campus Compliance Officer or Campus Legal Office staff. The Campus Compliance Officer and/or Legal Office will determine who is the most appropriate person to handle an Informal Complaint.
- b. While a written complaint is not required to initiate an Informal Complaint, the complainant will generally be asked to submit a signed complaint. If the matter is to be investigated, consideration shall be given to the situation and the wishes of the complainant.
- c. The results of the investigation shall be confidentially reported, according to the procedures of the Office of Legal Affairs and/or the Office of Diversity and Inclusion procedures, to the complainant, the alleged offender, the Legal Office, and as required, to the President, the relevant vice president, dean, chairman, or supervisor. Sanctions for sexual harassment may range from reprimand to termination, depending upon the circumstances of the case.



- d. Files will normally be kept for the period of time designated in the record retention policy of the office handling the complaint. Complainants and alleged may ask where and how long a file will be kept.
- e. The person accused of sexual harassment shall be:
  - i. told that a complaint has been made;
  - ii. informed of the specific facts of the complaint;
  - iii. told that the complainant has chosen to pursue the complaint under the Informal Complaint Procedures;
  - iv. given an opportunity to have his/her questions about the Informal Process answered before any review or investigation proceeds;
  - v. given a copy of the Sexual Harassment Policy; and
  - vi. advised of his/her rights to contest any disciplinary action taken against him/her as a result of the Informal Complaint Procedure.

## 6. Formal Complaints

Formal procedures for resolving sexual harassment complaints are available based on the classification of the complaining person.

- a. Faculty, all categories of staff, and students can file a complaint under the University of Maryland Code on Equity, Diversity, and Inclusion with a Campus unit equity administrator or the Campus Compliance Officer, Office of Diversity & Inclusion, 1130 Shriver Laboratory (405-2839). The University of Maryland Code on Equity, Diversity, and Inclusion is on-line at <http://www.president.umd.edu/policies/vi100b.html>
- b. Faculty members can file a complaint under the Faculty Grievance Procedure with the Faculty Ombuds Officer, 1116 Cole Student Activities Building (405-1901). The Faculty Grievance Procedure is on-line at <http://www.president.umd.edu/policies/ii400a.html>
- c. Exempt employees can file a complaint under the USM Policy on Grievances for Exempt and Non-Exempt Staff Employees with the Office of Staff Relations, Department of University Human Resources, 1100

Chesapeake Building (405-5651). This grievance policy is on-line at <http://www.usmh.usmd.edu/regents/bylaws/SectionVII/VII800.html>

- d. Non-Exempt employees can file a complaint under the USM Policy on Grievances for Exempt and Nonexempt Staff Employees with the Office of Staff Relations, Department of University Human Resources, 1100 Chesapeake Building (405-5651). This grievance policy is on-line at <http://www.usmh.usmd.edu/regents/bylaws/SectionVII/VII800.html>
- e. A student can file a complaint against another student under the Code of Student Conduct with the Office of Student Conduct, 2108 Mitchell Building (314-8204). The Code of Student Conduct is on-line at <http://www.president.umd.edu/policies/v100b.html>

The procedures listed above are long-standing, structured procedures established by law and/or University System of Maryland policy. Unlike the Informal Complaint Process, each procedure sets out specific steps, time limits, and other formal requirements. Time limits may be extended to take into account behavior considered continuing in nature. The location of a file on a complaint of sexual harassment and how long a file may be retained are determined by the particular procedure used. A complainant or person accused of harassment can find specific information about each of the Formal Complaint procedures by calling the relevant office listed above.

Following is a Statement on Sexual Relationships and Professional Conduct. While sexual relationships in the supervisory context are not prohibited in the sense that penalties are attached to such conduct, all members of the Campus community are urged to consider the ethical concerns that arise as a result of such relationships, and to take prompt and reasonable steps to prevent such issues.

#### STATEMENT ON SEXUAL RELATIONSHIPS AND PROFESSIONAL CONDUCT

The basic function of a university is the discovery and transmission of knowledge, activities which are founded upon the free and open exchange of ideas. In order for productive learning and the work that supports it to occur, members of the Campus community--faculty, students, and staff personnel--should pursue their responsibilities guided by a strong commitment to principles of mutual trust and confidence and professional codes of conduct.

It should be understood by all members of the Campus community that sexual relationships that occur in the context of educational or employment supervision and evaluation are generally deemed very unwise because they present serious ethical concerns. Many professional codes of conduct prohibit sexual relationships that occur within the context of one's profession. Accordingly, faculty and supervisors are warned about the possible costs of even an apparently consensual relationship. The element of power implicit in sexual relationships

occurring in the supervisory context can diminish a subordinate's actual freedom of choice. There is doubt whether any such relationship can be truly consensual. In addition, sexual relationships between a professor or supervisor and subordinate create an environment charged with potential conflict of interest. Questions of favoritism frequently arise. As a result, such conduct may subvert the normal structure of incentives that spurs works and learning advancement and interjects attitudes and pressures that are not consonant with the education and employment policies and principles to which the Campus is committed.

VI-1.30(A) UNIVERSITY OF MARYLAND PROCEDURES ON SEXUAL ASSAULT AND MISCONDUCT

(Approved by the President April 17, 1995; Amended June 6, 2012)

**I. Purpose**

The University is committed to educating the campus community about the nature and consequences of sexual misconduct. Although the primary focus is prevention, the University provides programs and services to assist victims of sexual misconduct and intimate partner violence, provides information about and referrals to the criminal justice system, and adjudicates cases in accordance with the *Code of Student Conduct* and other University administrative processes, as appropriate.

Every member of the University community should be aware that all sexual contact or behavior on the campus and/or occurring with a member of the University community must be consensual. Consent must be clear and voluntary, free of coercion or force, and may be communicated through verbal or non-verbal expression. In order to give consent, one must be of legal age for sexual consent and be both sober and conscious enough to understand what is being agreed to. Consent may be withdrawn at any point.

The University will not tolerate sexual assault, sexual harassment, or any other form of sexual misconduct. Such behavior is prohibited both by State and Federal law and University policy. The standard University disciplinary sanction for any sexual misconduct, including acquaintance rape, is dismissal from the University and/or termination of employment.

Sexual misconduct policies are enforceable for sexual misconduct that occurs on University premises or at University-sponsored events. Regardless of where sexual misconduct occurs the University will process any complaints in accordance with applicable University policies.

**II. Types of Sexual Misconduct**

- A. Sexual Assault: In accordance with the University System of Maryland Policy on Sexual Assault (see VI-1.30), the University recognizes and prohibits two levels of sexual assault:

Sexual Assault I - By stranger or acquaintance, rape, forcible sodomy, or forcible sexual penetration, however slight, of another person's anal or genital opening with any object. These acts must be committed either by force, threat, intimidation or through the use of the victim's mental or physical helplessness of which the accused was aware or should have been aware.

Sexual Assault II - By stranger or acquaintance, the touch of an unwilling person's intimate parts (defined as genitalia, groin, breast or buttocks, or clothing covering them) or forcing an unwilling person to touch another's intimate parts. These acts must be committed either by force, threat, intimidation or through the

use of the victim's mental or physical helplessness of which the accused was aware or should have been aware.

- B. Sexual Harassment: The University Policy and Procedures on Sexual Harassment defines sexual harassment as unwelcome sexual advances, unwelcome requests for sexual favors, or 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 or participation in a University-sponsored educational program or activity; or
  - ii. Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting that individual' or
  - iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance, or of creating an intimidating, hostile, or offensive educational or working environment.

The University Policy and Procedures on Sexual Harassment sets forth the procedures by which students, faculty and staff may report a complaint [see VI-1.20(A)]. Sexual harassment and sexual misconduct against students are forms of sex discrimination prohibited by Title IX of the Education Amendments of 1972 (Title IX). Title IX prohibits discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Questions about Title IX may be referred to the University's Title IX Coordinator:

Office of Diversity Education and Compliance  
1124 Marie Mount Hall  
University of Maryland  
College Park, MD 20742  
Phone 301-405-2838 ([ohrp.umd.edu/compliance](http://ohrp.umd.edu/compliance))

C. Intimate Partner Violence/Abuse:

The University further recognizes intimate partner violence and/or abuse as a dimension of sexual misconduct. In any current or past relationship, acts, threats, or a pattern of abusive behavior of a physical, sexual, or psychological nature intended to influence or otherwise control another person may be considered intimate partner violence or abuse. This includes any behaviors that are intended to intimidate, manipulate, humiliate, frighten, coerce, or injure another person.

Such conduct will be evaluated under current policies and procedures including the *Code of Student Conduct* or other applicable University policies.

### III. Procedures For A Victim To Follow If A Sexual Assault Occurs

The University Health Center Sexual Assault Response and Prevention Program Advocate Crisis Cell is a free and confidential initial contact to discuss options and resources. The 24 hour SARPP Advocate Crisis Cell is 301-741-3442.

The University encourages reporting of any sexual assault/rape to the University Police 301-405-3333 (if the assault occurred on campus) or the local police (if the assault occurred off campus) at 911.

#### A. Self-Care and Safety

It is important to get to a safe location. After an assault, the victim may be in a state of shock. Although the first reaction may be to clean up, DO NOT. Instead, the victim is advised to wrap in something warm, such as a blanket or coat. Staying warm, instead of cleaning up right away, will accomplish two important things:

- it will help in recovering from the shock.
- it is less likely that the evidence will be disturbed or destroyed if the victim decides to report the assault to law enforcement.

It is important for a victim to seek medical attention as soon as possible after a sexual assault. A medical exam is important for two reasons:

- it ensures that the victim receives appropriate medical treatment;
- a Sexual Assault Forensic Exam is essential in the collection of physical evidence if the victim decides to make a formal report to law enforcement.

#### B. Police/Law Enforcement & Evidence Collection

It is recommended that law enforcement be contacted as soon as possible or that the victim go to a hospital that can provide a Sexual Assault Forensic Exam (SAFE). Victims of a sexual assault can receive an anonymous SAFE that will collect evidence to assist in the investigation of the crime, and also attend to their medical needs at no cost. The victim will be registered as a patient of the hospital, but their identity will be anonymous to the police.

Any victim of sexual assault can access a SAFE within 120 hours of time the assault occurred. Each county has one hospital that can provide a SAFE. If the assault occurred in Prince George's County that provider is the Domestic Violence-Sexual Assault Center at the Prince George's Hospital in Cheverly (301-618-3154/24 hours). To find out the SAFE provider in any other county call 1-800-656-4673.

The victim can contact law enforcement immediately at 911 or for University Police, 301-405-3333.

To preserve any evidence:

- Do not disturb any evidence on the body or the location where the assault occurred. This means do not: shower or bathe, eat or drink, brush teeth or gargle, change clothes, urinate or defecate, brush or comb hair, smoke;
- Take to the hospital any clothing the victim was wearing at the time of the assault or immediately after the assault. If the victim has already changed clothing put it in a paper bag.

- Write down anything the victim can remember about the assailant and the assault.

#### C. Call Someone

Victims are advised to call someone for support immediately. Reactions to sexual assault vary - some victims are upset, some are angry and some are very calm and controlled. Whatever the reaction, one may make better decisions by talking to a trusted friend or relative, or someone who is professionally trained to deal with sexual assault like an advocate. In addition, this person can serve as a vital source of emotional support.

### IV. Victims' Bill of Rights

The United States Congress enacted the "Campus Sexual Assault Victims' Bill of Rights" in 1992 as a part of the Higher Education Amendments of 1992 (Public Law: 102-325, section 486(c)).

- Accuser and accused must have the same opportunity to have others present.
- Both parties shall be informed of the outcome of any disciplinary proceeding.
- Survivors shall be informed of their options to notify law enforcement.
- Survivors shall be notified of counseling services.
- Survivors shall be notified of options for changing academic and living situations.

### V. Sexual Misconduct Reporting Procedures

The health and safety of all members of the campus community are the University's primary concern. Sexual misconduct is considered a violation of a person's right to control his or her own body and ability to make a sexual choice. Anyone can be a victim of sexual misconduct. Victims of sexual misconduct in any form are strongly encouraged to seek assistance from one or more of the following resources 24 hours a day, seven days a week:

- University Police (Department of Public Safety) - **Emergency: 301-405-3333 / Mobile Phone: #3333 / Non-Emergency: 301-405-3555**
- Local Police in ANY location – **Emergency: 911**
- University Sexual Assault Response and Prevention Program (SARPP) – 24 hour Crisis Cell: **301-741-3442**
- Prince Georges County Domestic Violence and Sexual Assault Center (DV/SAC) – 24 hour: **301-618-3154** / Prince George's Hospital Center, 3001 Hospital Drive, Cheverly, Maryland.

#### A. Confidential Reporting

The following campus agencies will keep information as private and confidential as allowed by law (contact information for normal business hours):

- i. Sexual Assault Response and Prevention (SARPP) Advocate Office, University Health Center, Room 2118D / Telephone: 301-314-2222
- ii. Counseling Center (Shoemaker Building) / Telephone: 301-314-7651
- iii. Mental Health Service (Health Center) / Telephone: 301-314-8106
- iv. Faculty and Staff Assistance Program (University Health Center for faculty/staff) / Telephone: 301-314-8170 or 301-314-8099.

## B. Formal Reporting

Notice to the campus agencies listed below is official notice to the University. Victims have the right and can expect that all reports of sexual misconduct will be taken seriously and investigated when formally reported.

- i. University Police (Department of Public Safety Service Building) Emergency 301-405-3333 | Mobile Phone #3333 Non-Emergency 301-405-3555
- ii. Local police in any location: 911
- iii. Office of Student Conduct (Mitchell Building) Telephone: 301-314-8204
- iv. Office of Rights and Responsibilities (Department of Resident Life) Telephone: 301-314-7598
- v. University Human Resources (staff) Telephone: 301-405-3576
- vi. Office of the Provost (faculty) Telephone: 301-405-4252.

The University encourages all alleged sexual misconduct be reported promptly to University Officials and/or law enforcement agencies. The criminal process and the University disciplinary process are separate and independent processes. Reporting to the University does not preclude a victim from filing a report with the police. The University does not normally wait for the conclusion of criminal investigations or proceedings to conduct its own investigation and may take interim measures to protect the complainant and University community.

## C. Criminal Reporting

The University's Department of Public Safety is a full-service police agency serving the students, faculty, staff, and visitors within its jurisdiction. The safety and well-being of sexual misconduct victims is a primary concern of the University. Victims are encouraged to report any sexual misconduct to the University Police as soon as is reasonably possible taking care to preserve all evidence.

Upon receipt of a report, University Police will normally conduct a criminal investigation. The victim, however, has the option to decline to participate in an investigation. University Police officials can also assist sexual misconduct victims in notifying other law enforcement authorities, as appropriate. If University Police receive a report alleging misconduct, the appropriate University officials will be notified at which time a disciplinary investigation may be initiated.

## D. Student Disciplinary Reporting



All reports of sexual misconduct made to the Office of Student Conduct or the Department of Resident Life's Office of Rights and Responsibilities will be reviewed in accordance with the procedures outlined in the University's *Code of Student Conduct*. Any person may file a complaint of sexual misconduct against a University student, defined as a person who is taking or auditing courses at the institution either on a full- or part-time basis. The *Code of Student Conduct* extends to University premises or University-sponsored activities; however, the University will investigate all formal reports of alleged sexual misconduct regardless of jurisdiction to determine the need for possible protective measures.

There is no time limit to filing a formal complaint; however, persons are encouraged to promptly report alleged sexual misconduct in order to maximize the University's ability to investigate and respond. The University strives to resolve all complaints within 60 calendar days of the filing of a formal complaint. The resolution time may vary depending on the complexity of the investigation and severity and extent of the alleged misconduct.

*Retaliation:* Retaliation against any person filing a complaint or against any person cooperating in the investigation of such complaint is strictly prohibited. Retaliation includes but is not limited to direct or indirect intimidation, threats, ridicule, and/or harassment against any party involved in the investigation. Students found to be responsible for retaliation will be subject to disciplinary charges under the *Code of Student Conduct*. Retaliatory conduct may also constitute a criminal offense.

In cases of alleged sexual misconduct the University usually does not pursue disciplinary action against a complainant or witness for the improper use of alcohol or drugs related to the alleged sexual misconduct.

*Interim Measures:* All formal reports of alleged sexual misconduct, regardless of whether the complainant chooses to pursue resolution through the student conduct process will be investigated and steps will be taken to provide support to the complainant. This support may include taking appropriate interim action prior to the completion of the investigation and conclusion of the student conduct process.

Interim measures may include a "no contact" directive serving as notice to both parties that they must not have verbal, electronic, written or third party communication with one another, alteration of students' academic, University housing, and/or University employment arrangements. Failure to comply with interim measures may result in a student being charged with additional disciplinary violations.

## **VI. University Disciplinary Procedures**

- A. The Office of Student Conduct and the Department of Resident Life's Office of Rights and Responsibilities are responsible for student discipline on campus. If the

accused is a student, either a victim or the campus police may file a complaint with the Office of Student Conduct. If the incident occurred in or around the Residence Halls, South Campus Commons or The Courtyards the complaint will be referred to the Office of Rights and Responsibilities.

University student disciplinary procedures and procedural protections are set forth in the *Code of Student Conduct*, published in the Undergraduate and Graduate Catalogs. Both parties are given a number of important rights, including the right to pose questions to the other party, the right to be advised by their own attorney or advisor, the right to address the board, the right to question witnesses, the right to be informed of the outcome of the case, and the ability to appeal decisions made by hearing boards. The burden of proof is on the complainant, who must establish the guilt of the respondent by a preponderance of the evidence. Strict limits are placed upon inquiries about the prior sexual history of the complainant. Witnesses, including the complainant, are expected to appear in person and may be subject to questioning by the respondent, and by any attorney representing the respondent.

Acts of violence, including any sexual assault, may result in expulsion from the University, as provided by the *Code of Student Conduct*. Careful consideration will be given to any suggestion for a lesser penalty by an accuser. Students who violate federal, state, and/or local laws may also be subject to criminal charges.

- Office of Student Conduct: [osc.umd.edu](http://osc.umd.edu) (301-314-8204)
- Office of Rights and Responsibilities: [resnet.umd.edu/rights](http://resnet.umd.edu/rights) (301-314-7598)

B. Offenses committed by faculty and staff will be referred to University Human Resources and to the Office of the Provost, as appropriate. Disciplinary action may be taken, up to and including termination of employment from the University. Faculty or staff who violate federal, state, and/or local laws may also be subject to criminal charges.

- University Human Resources: [uhr.umd.edu](http://uhr.umd.edu) (301-405-5648)
- Office of the Provost (301-405-4252)

## **VII. Educational Programs and Prevention**

A. Sexual Assault Response and Prevention Program Peer Education

The University Health Center Sexual Assault Response and Prevention Program (SARPP) Education Coordinator is the contact point for the SARPP Peer Education programs ([sarppeducators@health.umd.edu](mailto:sarppeducators@health.umd.edu) or 301-314-8124). The SARPP Peer Educators offers interactive workshops which are available to any student organizations, groups or classes.

B. Department of Fraternity and Sorority Life Sexual Assault Prevention Program

The Department of Fraternity and Sorority Life employs a half-time Sexual Assault Prevention Coordinator who coordinates programming specifically for the Fraternity & Sorority community related to sexual assault prevention. The Coordinator can be reached at 301-314-7172 or 1110 Stamp Student Union.

C. Sexual Harassment Prevention Programs

The sexual harassment prevention programs are designed to educate faculty, staff, and students about sexual harassment. These programs seek to provide education and training on the legal definitions of sexual harassment, supervisor responsibility and liability with respect to behavior and climate in the employment or educational environment, intervention/confrontation techniques, and resources available to those who may experience sexual harassment. Training is offered by the Office of Diversity Education and Compliance and through University Human Resources.

D. Emergency Phones

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

E. University Police Crime Prevention Unit

A major function of the University Police is to provide crime prevention services to students, faculty, and staff who live and work within our community. Many crime prevention programs are regularly available and/or may be scheduled by calling 301-405-3555. For more information: [umpd.umd.edu/prevention/crime\\_prevention.cfm](http://umpd.umd.edu/prevention/crime_prevention.cfm).

F. 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. The escorts are conducted by either the Student Auxiliary Police Aide, or by a University Police Officer. To request an escort call 301-405-3555 or use a blue emergency light (PERT).

**VIII. Additional Resources and Applicable Policies**

- A. The Student Legal Aid Office, located in South Campus Dining Hall, provides free, confidential legal advice to any University student. Undergraduates may contact 301-314-7756 ([studentorg.umd.edu/legalaid](http://studentorg.umd.edu/legalaid)) and graduate students 301-405-5807 [gsg.umd.edu/resources/graduate-legal-aid](http://gsg.umd.edu/resources/graduate-legal-aid).
- B. University of Maryland *Code of Student Conduct* is available online at [president.umd.edu/policies/v100b.html](http://president.umd.edu/policies/v100b.html).

- C. University of Maryland System Policy & Procedures on Sexual Harassment are available online at [president.umd.edu/policies/vi120a.html](http://president.umd.edu/policies/vi120a.html).
- D. University of Maryland System Policy on Sexual Assault is available online at: [usmh.usmd.edu/regents/bylaws/SectionVI/VI130.html](http://usmh.usmd.edu/regents/bylaws/SectionVI/VI130.html).

United States Department of Labor  
Office of the Assistant Secretary for Administration and Management

**Title IX, Education Amendments of 1972**

**(Title 20 U.S.C. Sections 1681-1688)**

**Section 1681. Sex**

**(a) Prohibition against discrimination; exceptions.** 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, except that:

**(1) Classes of educational institutions subject to prohibition**

in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

**(2) Educational institutions commencing planned change in admissions**

in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the later;

**(3) Educational institutions of religious organizations with contrary religious tenets**

this section shall not apply to any educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

**(4) Educational institutions training individuals for military services or merchant marine**

this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

**(5) Public educational institutions with traditional and continuing admissions policy**

in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

**(6) Social fraternities or sororities; voluntary youth service organizations**

this section shall not apply to membership practices --

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of Title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association; Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

**(7) Boy or Girl conferences**

this section shall not apply to—

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for--

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

**(8) Father-son or mother-daughter activities at educational institutions**

this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

**(9) Institutions of higher education scholarship awards in "beauty" pageants**

this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

**(b) Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance.**

Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: *Provided*, that this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

**(c) Educational institution defined.**

For the purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college or department.

**Section 1682. Federal administrative enforcement; report to Congressional committees**

Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 1681 of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President.

Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law:

*Provided, however*, that no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

### **Section 1683. Judicial Review**

Any department or agency action taken pursuant to section 1682 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 1682 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, United States Code, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

### **Section 1684. Blindness or visual impairment; prohibition against discrimination**

No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity; but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

### **Section 1685. Authority under other laws unaffected**

Nothing in this chapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

### **Section 1686. Interpretation with respect to living facilities**

Notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.

### **Section 1687. Interpretation of "program or activity"**

For the purposes of this title, the term "program or activity" and "program" mean all of the operations of –

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributed such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or



(B) a local educational agency (as defined in section 2854(a)(10) of this title, system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship –

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2) or (3);

any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 1681 of this title to such operation would not be consistent with the religious tenets of such organization.

### **Section 1688. Neutrality with respect to abortion**

Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

More information about the [Civil Rights Act of 1964](#).

## U.S. Department of Education Office for Civil Rights



### Dear Colleague Letter: Sexual Violence Background, Summary, and Fast Facts April 4, 2011

#### Sexual Violence Statistics and Effects

- Acts of sexual violence are vastly under-reported.<sup>1</sup> Yet, data show that our nation's young students suffer from acts of sexual violence early and the likelihood that they will be assaulted by the time they graduate is significant. For example:
  - Recent data shows nearly 4,000 reported incidents of sexual battery and over 800 reported rapes and attempted rapes occurring *in our nation's public high schools*.<sup>2</sup> Indeed, by the time girls graduate from high school, more than one in ten will have been physically forced to have sexual intercourse in or out of school.<sup>3</sup>
  - When young women get to *college*, nearly 20% of them will be victims of attempted or actual sexual assault, as will about 6% of undergraduate men.<sup>4</sup>
- Victims of sexual assault are more likely to suffer academically and from depression, post-traumatic stress disorder, to abuse alcohol and drugs, and to contemplate suicide.<sup>5</sup>

#### Why is ED Issuing the Dear Colleague letter (DCL)?

Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. Sec. 1681, *et seq.*, prohibits discrimination on the basis of sex in any federally funded education program or activity. ED is issuing the DCL to explain that the requirements of Title IX cover sexual violence and to remind schools<sup>6</sup> of their responsibilities to take immediate and effective steps to respond to sexual violence in accordance with the requirements of Title IX. In the context of the letter, sexual violence means physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. A number of acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion.

<sup>1</sup> For example, see HEATHER M. KARJANE, ET AL., *SEXUAL ASSAULT ON CAMPUS: WHAT COLLEGES AND UNIVERSITIES ARE DOING ABOUT IT 3* (Nat'l. Institute of Justice, Dec. 2005).

<sup>2</sup> SIMONE ROBERS, ET AL., *INDICATORS OF SCHOOL CRIME AND SAFETY 104* (U.S. Dep't of Education & U.S. Dep't of Justice, Nov. 2010), available at <http://nces.ed.gov/pubs2011/2011002.pdf>.

<sup>3</sup> EATON, D. K., KANN, L., KINCHEN, S., SHANKLIN, S., ROSS, J., HAWKINS, J., ET AL., *YOUTH RISK BEHAVIOR SURVEILLANCE-UNITED STATES 2009, Morbidity and Mortality Weekly Report*.

<sup>4</sup> CHRISTOPHER P. KREBS ET AL., *THE CAMPUS SEXUAL ASSAULT STUDY FINAL REPORT* xiii, 5-5 (Nat'l. Criminal Justice Reference Service, Oct. 2007), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>.

<sup>5</sup> For example, see WORLD HEALTH ORGANIZATION, *WORLD REPORT ON VIOLENCE AND HEALTH* 162-164 (Etienne G. Krug, et al. eds., 2002), available at [http://whqlibdoc.who.int/publications/2002/9241545615\\_eng.pdf](http://whqlibdoc.who.int/publications/2002/9241545615_eng.pdf); CENTERS FOR DISEASE CONTROL, *UNDERSTANDING SEXUAL VIOLENCE: FACT SHEET 1* (2011), available at [http://www.cdc.gov/violenceprevention/pdf/SV\\_factsheet\\_2011-a.pdf](http://www.cdc.gov/violenceprevention/pdf/SV_factsheet_2011-a.pdf).

<sup>6</sup> "Schools" includes all recipients of federal funding and includes school districts, colleges, and universities.

## What does the DCL do?

- Provides guidance on the unique concerns that arise in sexual violence cases, such as the role of criminal investigations and a school's independent responsibility to investigate and address sexual violence.
- Provides guidance and examples about key Title IX requirements and how they relate to sexual violence, such as the requirements to publish a policy against sex discrimination, designate a Title IX coordinator, and adopt and publish grievance procedures.
- Discusses proactive efforts schools can take to prevent sexual violence.
- Discusses the interplay between Title IX, FERPA, and the Clery Act<sup>7</sup> as it relates to a complainant's right to know the outcome of his or her complaint, including relevant sanctions facing the perpetrator.
- Provides examples of remedies and enforcement strategies that schools and the Office for Civil Rights (OCR) may use to respond to sexual violence.

## What are a school's obligations under Title IX regarding sexual violence?

- Once a school knows or reasonably should know of possible sexual violence, it must take immediate and appropriate action to investigate or otherwise determine what occurred.
- If sexual violence has occurred, a school must take prompt and effective steps to end the sexual violence, prevent its recurrence, and address its effects, whether or not the sexual violence is the subject of a criminal investigation.
- A school must take steps to protect the complainant as necessary, including interim steps taken prior to the final outcome of the investigation.
- A school must provide a grievance procedure for students to file complaints of sex discrimination, including complaints of sexual violence. These procedures must include an equal opportunity for both parties to present witnesses and other evidence and the same appeal rights.
- A school's grievance procedures must use the preponderance of the evidence standard to resolve complaints of sex discrimination.
- A school must notify both parties of the outcome of the complaint.

## How can I get help from OCR?

OCR offers technical assistance to help schools achieve voluntary compliance with the civil rights laws it enforces and works with schools to develop approaches to preventing and addressing discrimination. A school should contact the OCR enforcement office serving its jurisdiction for technical assistance. For contact information, please visit ED's website at <http://wdcrocolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.

A complaint of discrimination can be filed by anyone who believes that a school that receives Federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age. The person or organization filing the complaint need not be a victim of the alleged discrimination, but may complain on behalf of another person or group. For information on how to file a complaint with OCR, visit <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html> or contact OCR's Customer Service Team at 1-800-421-3481.

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<sup>7</sup> The Family Educational Rights and Privacy Act is at 20 U.S.C. Sec. 1232g, and the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act is at 20 U.S.C. Sec. 1092(f).



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 4, 2011

Dear Colleague:

Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime.

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX. In order to assist recipients, which include school districts, colleges, and universities (hereinafter "schools" or "recipients") in meeting these obligations, this letter<sup>1</sup> explains that the requirements of Title IX pertaining to sexual harassment also cover sexual violence, and lays out the specific Title IX requirements applicable to sexual violence.<sup>2</sup> Sexual violence, as that term is used in this letter, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape,

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<sup>1</sup> The Department has determined that this Dear Colleague Letter is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at: [http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory\\_matters\\_pdf/012507\\_good\\_guidance.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/012507_good_guidance.pdf). OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This letter does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to [OCR@ed.gov](mailto:OCR@ed.gov), or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

<sup>2</sup> Use of the term "sexual harassment" throughout this document includes sexual violence unless otherwise noted. Sexual harassment also may violate Title IV of the Civil Rights Act of 1964 (42 U.S.C. § 2000c), which prohibits public school districts and colleges from discriminating against students on the basis of sex, among other bases. The U.S. Department of Justice enforces Title IV.

sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

The statistics on sexual violence are both deeply troubling and a call to action for the nation. A report prepared for the National Institute of Justice found that about 1 in 5 women are victims of completed or attempted sexual assault while in college.<sup>3</sup> The report also found that approximately 6.1 percent of males were victims of completed or attempted sexual assault during college.<sup>4</sup> According to data collected under the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), in 2009, college campuses reported nearly 3,300 forcible sex offenses as defined by the Clery Act.<sup>5</sup> This problem is not limited to college. During the 2007-2008 school year, there were 800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries at public high schools.<sup>6</sup> Additionally, the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population.<sup>7</sup> The Department is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school's programs and activities.

This letter begins with a discussion of Title IX's requirements related to student-on-student sexual harassment, including sexual violence, and explains schools' responsibility to take immediate and effective steps to end sexual harassment and sexual violence. These requirements are discussed in detail in OCR's *Revised Sexual Harassment Guidance* issued in 2001 (*2001 Guidance*).<sup>8</sup> This letter supplements the *2001 Guidance* by providing additional guidance and practical examples regarding the Title IX requirements as they relate to sexual violence. This letter concludes by discussing the proactive efforts schools can take to prevent sexual harassment and violence, and by providing examples of remedies that schools and OCR may use to end such conduct, prevent its recurrence, and address its effects. Although some examples contained in this letter are applicable only in the postsecondary context, sexual

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<sup>3</sup> CHRISTOPHER P. KREBS ET AL., THE CAMPUS SEXUAL ASSAULT STUDY: FINAL REPORT xiii (Nat'l Criminal Justice Reference Serv., Oct. 2007), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>. This study also found that the majority of campus sexual assaults occur when women are incapacitated, primarily by alcohol. *Id.* at xviii.

<sup>4</sup> *Id.* at 5-5.

<sup>5</sup> U.S. Department of Education, Office of Postsecondary Education, Summary Crime Statistics (data compiled from reports submitted in compliance with the Clery Act), available at <http://www2.ed.gov/admins/lead/safety/criminal2007-09.pdf>. Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person, forcibly and/or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. 34 C.F.R. Part 668, Subpt. D, App. A.

<sup>6</sup> SIMONE ROBERS ET AL., INDICATORS OF SCHOOL CRIME AND SAFETY: 2010 at 104 (U.S. Dep't of Educ. & U.S. Dep't of Justice, Nov. 2010), available at <http://nces.ed.gov/pubs2011/2011002.pdf>.

<sup>7</sup> ERIKA HARRELL & MICHAEL R. RAND, CRIME AGAINST PEOPLE WITH DISABILITIES, 2008 (Bureau of Justice Statistics, U.S. Dep't of Justice, Dec. 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/capd08.pdf>.

<sup>8</sup> The *2001 Guidance* is available on the Department's Web site at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>. This letter focuses on peer sexual harassment and violence. Schools' obligations and the appropriate response to sexual harassment and violence committed by employees may be different from those described in this letter. Recipients should refer to the *2001 Guidance* for further information about employee harassment of students.

harassment and violence also are concerns for school districts. The Title IX obligations discussed in this letter apply equally to school districts unless otherwise noted.

## **Title IX Requirements Related to Sexual Harassment and Sexual Violence**

### **Schools' Obligations to Respond to Sexual Harassment and Sexual Violence**

Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment prohibited by Title IX.<sup>9</sup>

As explained in OCR's *2001 Guidance*, when a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For instance, a single instance of rape is sufficiently severe to create a hostile environment.<sup>10</sup>

Title IX protects students from sexual harassment in a school's education programs and activities. This means that Title IX protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in a school's facilities, on a school bus, at a class or training program

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<sup>9</sup> Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. The Title IX obligations discussed in this letter also apply to gender-based harassment. Gender-based harassment is discussed in more detail in the *2001 Guidance*, and in the 2010 Dear Colleague letter on Harassment and Bullying, which is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

<sup>10</sup> See, e.g., *Jennings v. Univ. of N.C.*, 444 F.3d 255, 268, 274 n.12 (4th Cir. 2006) (acknowledging that while not an issue in this case, a single incident of sexual assault or rape could be sufficient to raise a jury question about whether a hostile environment exists, and noting that courts look to Title VII cases for guidance in analyzing Title IX sexual harassment claims); *Vance v. Spencer Cnty. Pub. Sch. Dist.*, 231 F.3d 253, 259 n.4 (6th Cir. 2000) (“[w]ithin the context of Title IX, a student’s claim of hostile environment can arise from a single incident” (quoting *Doe v. Sch. Admin. Dist. No. 19*, 66 F. Supp. 2d 57, 62 (D. Me. 1999))); *Soper v. Hoben*, 195 F.3d 845, 855 (6th Cir. 1999) (explaining that rape and sexual abuse “obviously qualify[ed] as...severe, pervasive, and objectively offensive sexual harassment”); see also *Berry v. Chi. Transit Auth.*, 618 F.3d 688, 692 (7th Cir. 2010) (in the Title VII context, “a single act can create a hostile environment if it is severe enough, and instances of uninvited physical contact with intimate parts of the body are among the most severe types of sexual harassment”); *Turner v. Saloon, Ltd.*, 595 F.3d 679, 686 (7th Cir. 2010) (noting that “[o]ne instance of conduct that is sufficiently severe may be enough,” which is “especially true when the touching is of an intimate body part” (quoting *Jackson v. Cnty. of Racine*, 474 F.3d 493, 499 (7th Cir. 2007))); *McKinnis v. Crescent Guardian, Inc.*, 189 F. App’x 307, 310 (5th Cir. 2006) (holding that “the deliberate and unwanted touching of [a plaintiff’s] intimate body parts can constitute severe sexual harassment” in Title VII cases (quoting *Harvill v. Westward Commc’ns, L.L.C.*, 433 F.3d 428, 436 (5th Cir. 2005))).

sponsored by the school at another location, or elsewhere. For example, Title IX protects a student who is sexually assaulted by a fellow student during a school-sponsored field trip.<sup>11</sup>

If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.<sup>12</sup> Schools also are required to publish a notice of nondiscrimination and to adopt and publish grievance procedures. Because of these requirements, which are discussed in greater detail in the following section, schools need to ensure that their employees are trained so that they know to report harassment to appropriate school officials, and so that employees with the authority to address harassment know how to respond properly. Training for employees should include practical information about how to identify and report sexual harassment and violence. OCR recommends that this training be provided to any employees likely to witness or receive reports of sexual harassment and violence, including teachers, school law enforcement unit employees, school administrators, school counselors, general counsels, health personnel, and resident advisors.

Schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school's education program or activity. If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures. Because students often experience the continuing effects of off-campus sexual harassment in the educational setting, schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus. For example, if a student alleges that he or she was sexually assaulted by another student off school grounds, and that upon returning to school he or she was taunted and harassed by other students who are the alleged perpetrator's friends, the school should take the earlier sexual assault into account in determining whether there is a sexually hostile environment. The school also should take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation from the perpetrator and his or her associates.

Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school's grievance procedures or otherwise requests action on the student's behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. As discussed later in this letter, the school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct. The specific steps in a school's

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<sup>11</sup> Title IX also protects third parties from sexual harassment or violence in a school's education programs and activities. For example, Title IX protects a high school student participating in a college's recruitment program, a visiting student athlete, and a visitor in a school's on-campus residence hall. Title IX also protects employees of a recipient from sexual harassment. For further information about harassment of employees, see *2001 Guidance* at n.1.

<sup>12</sup> This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. See *2001 Guidance* at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. See *Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 643, 648 (1999).

investigation will vary depending upon the nature of the allegations, the age of the student or students involved (particularly in elementary and secondary schools), the size and administrative structure of the school, and other factors. Yet as discussed in more detail below, the school’s inquiry must in all cases be prompt, thorough, and impartial. In cases involving potential criminal conduct, school personnel must determine, consistent with State and local law, whether appropriate law enforcement or other authorities should be notified.<sup>13</sup>

Schools also should inform and obtain consent from the complainant (or the complainant’s parents if the complainant is under 18 and does not attend a postsecondary institution) before beginning an investigation. If the complainant requests confidentiality or asks that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school should inform the complainant that its ability to respond may be limited.<sup>14</sup> The school also should tell the complainant that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

As discussed in the *2001 Guidance*, if the complainant continues to ask that his or her name or other identifiable information not be revealed, the school should evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the school may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant’s age; whether there have been other harassment complaints about the same individual; and the alleged harasser’s rights to receive information about the allegations if the information is maintained by the school as an “education record” under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.<sup>15</sup> The school should inform the complainant if it cannot ensure confidentiality. Even if the school cannot take disciplinary action against the alleged harasser because the complainant insists on confidentiality, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence. Examples of such steps are discussed later in this letter.

Compliance with Title IX, such as publishing a notice of nondiscrimination, designating an employee to coordinate Title IX compliance, and adopting and publishing grievance procedures, can serve as preventive measures against harassment. Combined with education and training programs, these measures can help ensure that all students and employees recognize the

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<sup>13</sup> In states with mandatory reporting laws, schools may be required to report certain incidents to local law enforcement or child protection agencies.

<sup>14</sup> Schools should refer to the *2001 Guidance* for additional information on confidentiality and the alleged perpetrator’s due process rights.

<sup>15</sup> For example, the alleged harasser may have a right under FERPA to inspect and review portions of the complaint that directly relate to him or her. In that case, the school must redact the complainant’s name and other identifying information before allowing the alleged harasser to inspect and review the sections of the complaint that relate to him or her. In some cases, such as those where the school is required to report the incident to local law enforcement or other officials, the school may not be able to maintain the complainant’s confidentiality.



nature of sexual harassment and violence, and understand that the school will not tolerate such conduct. Indeed, these measures may bring potentially problematic conduct to the school's attention before it becomes serious enough to create a hostile environment. Training for administrators, teachers, staff, and students also can help ensure that they understand what types of conduct constitute sexual harassment or violence, can identify warning signals that may need attention, and know how to respond. More detailed information and examples of education and other preventive measures are provided later in this letter.

### **Procedural Requirements Pertaining to Sexual Harassment and Sexual Violence**

Recipients of Federal financial assistance must comply with the procedural requirements outlined in the Title IX implementing regulations. Specifically, a recipient must:

- (A) Disseminate a notice of nondiscrimination;<sup>16</sup>
- (B) Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX;<sup>17</sup> and
- (C) Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex discrimination complaints.<sup>18</sup>

These requirements apply to all forms of sexual harassment, including sexual violence, and are important for preventing and effectively responding to sex discrimination. They are discussed in greater detail below. OCR advises recipients to examine their current policies and procedures on sexual harassment and sexual violence to determine whether those policies comply with the requirements articulated in this letter and the *2001 Guidance*. Recipients should then implement changes as needed.

#### **(A) Notice of Nondiscrimination**

The Title IX regulations require that each recipient publish a notice of nondiscrimination stating that the recipient does not discriminate on the basis of sex in its education programs and activities, and that Title IX requires it not to discriminate in such a manner.<sup>19</sup> The notice must state that inquiries concerning the application of Title IX may be referred to the recipient's Title IX coordinator or to OCR. It should include the name or title, office address, telephone number, and e-mail address for the recipient's designated Title IX coordinator.

The notice must be widely distributed to all students, parents of elementary and secondary students, employees, applicants for admission and employment, and other relevant persons. OCR recommends that the notice be prominently posted on school Web sites and at various

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<sup>16</sup> 34 C.F.R. § 106.9.

<sup>17</sup> *Id.* § 106.8(a).

<sup>18</sup> *Id.* § 106.8(b).

<sup>19</sup> *Id.* § 106.9(a).

locations throughout the school or campus and published in electronic and printed publications of general distribution that provide information to students and employees about the school's services and policies. The notice should be available and easily accessible on an ongoing basis.

Title IX does not require a recipient to adopt a policy specifically prohibiting sexual harassment or sexual violence. As noted in the *2001 Guidance*, however, a recipient's general policy prohibiting sex discrimination will not be considered effective and would violate Title IX if, because of the lack of a specific policy, students are unaware of what kind of conduct constitutes sexual harassment, including sexual violence, or that such conduct is prohibited sex discrimination. OCR therefore recommends that a recipient's nondiscrimination policy state that prohibited sex discrimination covers sexual harassment, including sexual violence, and that the policy include examples of the types of conduct that it covers.

(B) *Title IX Coordinator*

The Title IX regulations require a recipient to notify all students and employees of the name or title and contact information of the person designated to coordinate the recipient's compliance with Title IX.<sup>20</sup> The coordinator's responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. The Title IX coordinator or designee should be available to meet with students as needed. If a recipient designates more than one Title IX coordinator, the notice should describe each coordinator's responsibilities (*e.g.*, who will handle complaints by students, faculty, and other employees). The recipient should designate one coordinator as having ultimate oversight responsibility, and the other coordinators should have titles clearly showing that they are in a deputy or supporting role to the senior coordinator. The Title IX coordinators should not have other job responsibilities that may create a conflict of interest. For example, serving as the Title IX coordinator and a disciplinary hearing board member or general counsel may create a conflict of interest.

Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. Because sexual violence complaints often are filed with the school's law enforcement unit, all school law enforcement unit employees should receive training on the school's Title IX grievance procedures and any other procedures used for investigating reports of sexual violence. In addition, these employees should receive copies of the school's Title IX policies. Schools should instruct law enforcement unit employees both to notify complainants of their right to file a Title IX sex discrimination complaint with the school in addition to filing a criminal complaint, and to report incidents of sexual violence to the Title IX coordinator if the complainant consents. The school's Title IX coordinator or designee should be available to provide assistance to school law enforcement unit employees regarding how to respond appropriately to reports of sexual violence. The Title IX coordinator also should be given access to school law enforcement unit investigation notes

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<sup>20</sup> *Id.* § 106.8(a).

and findings as necessary for the Title IX investigation, so long as it does not compromise the criminal investigation.

(C) Grievance Procedures

The Title IX regulations require all recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints.<sup>21</sup> The grievance procedures must apply to sex discrimination complaints filed by students against school employees, other students, or third parties.

Title IX does not require a recipient to provide separate grievance procedures for sexual harassment and sexual violence complaints. Therefore, a recipient may use student disciplinary procedures or other separate procedures to resolve such complaints. Any procedures used to adjudicate complaints of sexual harassment or sexual violence, including disciplinary procedures, however, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution.<sup>22</sup> These requirements are discussed in greater detail below. If the recipient relies on disciplinary procedures for Title IX compliance, the Title IX coordinator should review the recipient's disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX.<sup>23</sup>

Grievance procedures generally may include voluntary informal mechanisms (*e.g.*, mediation) for resolving some types of sexual harassment complaints. OCR has frequently advised recipients, however, that it is improper for a student who complains of harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school (*e.g.*, participation by a trained counselor, a trained mediator, or, if appropriate, a teacher or administrator). In addition, as stated in the *2001 Guidance*, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault complaints.

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<sup>21</sup> *Id.* § 106.8(b). Title IX also requires recipients to adopt and publish grievance procedures for employee complaints of sex discrimination.

<sup>22</sup> These procedures must apply to all students, including athletes. If a complaint of sexual violence involves a student athlete, the school must follow its standard procedures for resolving sexual violence complaints. Such complaints must not be addressed solely by athletics department procedures. Additionally, if an alleged perpetrator is an elementary or secondary student with a disability, schools must follow the procedural safeguards in the Individuals with Disabilities Education Act (at 20 U.S.C. § 1415 and 34 C.F.R. §§ 300.500-300.519, 300.530-300.537) as well as the requirements of Section 504 of the Rehabilitation Act of 1973 (at 34 C.F.R. §§ 104.35-104.36) when conducting the investigation and hearing.

<sup>23</sup> A school may not absolve itself of its Title IX obligations to investigate and resolve complaints of sexual harassment or violence by delegating, whether through express contractual agreement or other less formal arrangement, the responsibility to administer school discipline to school resource officers or "contract" law enforcement officers. See 34 C.F.R. § 106.4.

Prompt and Equitable Requirements

As stated in the *2001 Guidance*, OCR has identified a number of elements in evaluating whether a school's grievance procedures provide for prompt and equitable resolution of sexual harassment complaints. These elements also apply to sexual violence complaints because, as explained above, sexual violence is a form of sexual harassment. OCR will review all aspects of a school's grievance procedures, including the following elements that are critical to achieve compliance with Title IX:

- Notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
- Application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence;
- Designated and reasonably prompt time frames for the major stages of the complaint process;
- Notice to parties of the outcome of the complaint;<sup>24</sup> and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

As noted in the *2001 Guidance*, procedures adopted by schools will vary in detail, specificity, and components, reflecting differences in the age of students, school sizes and administrative structures, State or local legal requirements, and past experiences. Although OCR examines whether all applicable elements are addressed when investigating sexual harassment complaints, this letter focuses on those elements where our work indicates that more clarification and explanation are needed, including:

(A) Notice of the grievance procedures

The procedures for resolving complaints of sex discrimination, including sexual harassment, should be written in language appropriate to the age of the school's students, easily understood, easily located, and widely distributed. OCR recommends that the grievance procedures be prominently posted on school Web sites; sent electronically to all members of the school community; available at various locations throughout the school or campus; and summarized in or attached to major publications issued by the school, such as handbooks, codes of conduct, and catalogs for students, parents of elementary and secondary students, faculty, and staff.

(B) Adequate, Reliable, and Impartial Investigation of Complaints

OCR's work indicates that a number of issues related to an adequate, reliable, and impartial investigation arise in sexual harassment and violence complaints. In some cases, the conduct

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<sup>24</sup> "Outcome" does not refer to information about disciplinary sanctions unless otherwise noted. Notice of the outcome is discussed in greater detail in Section D below.

may constitute both sexual harassment under Title IX and criminal activity. Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation. In addition, a criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.

A school should notify a complainant of the right to file a criminal complaint, and should not dissuade a victim from doing so either during or after the school's internal Title IX investigation. For instance, if a complainant wants to file a police report, the school should not tell the complainant that it is working toward a solution and instruct, or ask, the complainant to wait to file the report.

Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation and, if needed, must take immediate steps to protect the student in the educational setting. For example, a school should not delay conducting its own investigation or taking steps to protect the complainant because it wants to see whether the alleged perpetrator will be found guilty of a crime. Any agreement or Memorandum of Understanding (MOU) with a local police department must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges), the school must promptly resume and complete its fact-finding for the Title IX investigation.<sup>25</sup> Moreover, nothing in an MOU or the criminal investigation itself should prevent a school from notifying complainants of their Title IX rights and the school's grievance procedures, or from taking interim steps to ensure the safety and well-being of the complainant and the school community while the law enforcement agency's fact-gathering is in progress. OCR also recommends that a school's MOU include clear policies on when a school will refer a matter to local law enforcement.

As noted above, the Title IX regulation requires schools to provide equitable grievance procedures. As part of these procedures, schools generally conduct investigations and hearings to determine whether sexual harassment or violence occurred. In addressing complaints filed with OCR under Title IX, OCR reviews a school's procedures to determine whether the school is using a preponderance of the evidence standard to evaluate complaints. The Supreme Court has applied a preponderance of the evidence standard in civil litigation involving discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.* Like Title IX,

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<sup>25</sup> In one recent OCR sexual violence case, the prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances.

Title VII prohibits discrimination on the basis of sex.<sup>26</sup> OCR also uses a preponderance of the evidence standard when it resolves complaints against recipients. For instance, OCR’s Case Processing Manual requires that a noncompliance determination be supported by the preponderance of the evidence when resolving allegations of discrimination under all the statutes enforced by OCR, including Title IX.<sup>27</sup> OCR also uses a preponderance of the evidence standard in its fund termination administrative hearings.<sup>28</sup> Thus, in order for a school’s grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (*i.e.*, it is more likely than not that sexual harassment or violence occurred). The “clear and convincing” standard (*i.e.*, it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence.

Throughout a school’s Title IX investigation, including at any hearing, the parties must have an equal opportunity to present relevant witnesses and other evidence. The complainant and the alleged perpetrator must be afforded similar and timely access to any information that will be used at the hearing.<sup>29</sup> For example, a school should not conduct a pre-hearing meeting during which only the alleged perpetrator is present and given an opportunity to present his or her side of the story, unless a similar meeting takes place with the complainant; a hearing officer or disciplinary board should not allow only the alleged perpetrator to present character witnesses at a hearing; and a school should not allow the alleged perpetrator to review the complainant’s

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<sup>26</sup> See, e.g., *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99 (2003) (noting that under the “conventional rule of civil litigation,” the preponderance of the evidence standard generally applies in cases under Title VII); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 252-55 (1989) (approving preponderance standard in Title VII sex discrimination case) (plurality opinion); *id.* at 260 (White, J., concurring in the judgment); *id.* at 261 (O’Connor, J., concurring in the judgment). The 2001 *Guidance* noted (on page vi) that “[w]hile *Gebser* and *Davis* made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the *Davis* Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX.” See also *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007) (“We look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX.”).

<sup>27</sup> OCR’s Case Processing Manual is available on the Department’s Web site, at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

<sup>28</sup> The Title IX regulations adopt the procedural provisions applicable to Title VI of the Civil Rights Act of 1964. See 34 C.F.R. § 106.71 (“The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference.”). The Title VI regulations apply the Administrative Procedure Act to administrative hearings required prior to termination of Federal financial assistance and require that termination decisions be “supported by and in accordance with the reliable, probative and substantial evidence.” 5 U.S.C. § 556(d). The Supreme Court has interpreted “reliable, probative and substantial evidence” as a direction to use the preponderance standard. See *Steadman v. SEC*, 450 U.S. 91, 98-102 (1981).

<sup>29</sup> Access to this information must be provided consistent with FERPA. For example, if a school introduces an alleged perpetrator’s prior disciplinary records to support a tougher disciplinary penalty, the complainant would not be allowed access to those records. Additionally, access should not be given to privileged or confidential information. For example, the alleged perpetrator should not be given access to communications between the complainant and a counselor or information regarding the complainant’s sexual history.

statement without also allowing the complainant to review the alleged perpetrator’s statement.

While OCR does not require schools to permit parties to have lawyers at any stage of the proceedings, if a school chooses to allow the parties to have their lawyers participate in the proceedings, it must do so equally for both parties. Additionally, any school-imposed restrictions on the ability of lawyers to speak or otherwise participate in the proceedings should apply equally. OCR strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing. Allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment. OCR also recommends that schools provide an appeals process. If a school provides for appeal of the findings or remedy, it must do so for both parties. Schools must maintain documentation of all proceedings, which may include written findings of facts, transcripts, or audio recordings.

All persons involved in implementing a recipient’s grievance procedures (*e.g.*, Title IX coordinators, investigators, and adjudicators) must have training or experience in handling complaints of sexual harassment and sexual violence, and in the recipient’s grievance procedures. The training also should include applicable confidentiality requirements. In sexual violence cases, the fact-finder and decision-maker also should have adequate training or knowledge regarding sexual violence.<sup>30</sup> Additionally, a school’s investigation and hearing processes cannot be equitable unless they are impartial. Therefore, any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties should be disclosed.

Public and state-supported schools must provide due process to the alleged perpetrator. However, schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant.

(C) *Designated and Reasonably Prompt Time Frames*

OCR will evaluate whether a school’s grievance procedures specify the time frames for all major stages of the procedures, as well as the process for extending timelines. Grievance procedures should specify the time frame within which: (1) the school will conduct a full investigation of the complaint; (2) both parties receive a response regarding the outcome of the complaint; and (3) the parties may file an appeal, if applicable. Both parties should be given periodic status updates. Based on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint. Whether OCR considers complaint resolutions to be timely, however, will vary depending on the complexity of the investigation and the severity and extent of the harassment. For example, the resolution of a complaint involving multiple incidents with multiple complainants likely would take longer than one involving a single incident that

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<sup>30</sup> For instance, if an investigation or hearing involves forensic evidence, that evidence should be reviewed by a trained forensic examiner.

occurred in a classroom during school hours with a single complainant.

(D) Notice of Outcome

Both parties must be notified, in writing, about the outcome of both the complaint and any appeal,<sup>31</sup> *i.e.*, whether harassment was found to have occurred. OCR recommends that schools provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently. Title IX does not require the school to notify the alleged perpetrator of the outcome before it notifies the complainant.

Due to the intersection of Title IX and FERPA requirements, OCR recognizes that there may be confusion regarding what information a school may disclose to the complainant.<sup>32</sup> FERPA generally prohibits the nonconsensual disclosure of personally identifiable information from a student's "education record." However, as stated in the *2001 Guidance*, FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.<sup>33</sup> Disclosure of other information in the student's "education record," including information about sanctions that do not relate to the harassed student, may result in a violation of FERPA.

Further, when the conduct involves a crime of violence or a non-forcible sex offense,<sup>34</sup> FERPA permits a postsecondary institution to disclose to the alleged victim the final results of a

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<sup>31</sup> As noted previously, "outcome" does not refer to information about disciplinary sanctions unless otherwise noted.

<sup>32</sup> In 1994, Congress amended the General Education Provisions Act (GEPA), of which FERPA is a part, to state that nothing in GEPA "shall be construed to affect the applicability of title VI of the Civil Rights Act of 1964, title IX of Education Amendments of 1972, title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program." 20 U.S.C. § 1221(d). The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. *See 2001 Guidance* at vii.

<sup>33</sup> This information directly relates to the complainant and is particularly important in sexual harassment cases because it affects whether a hostile environment has been eliminated. Because seeing the perpetrator may be traumatic, a complainant in a sexual harassment case may continue to be subject to a hostile environment if he or she does not know when the perpetrator will return to school or whether he or she will continue to share classes or a residence hall with the perpetrator. This information also directly affects a complainant's decision regarding how to work with the school to eliminate the hostile environment and prevent its recurrence. For instance, if a complainant knows that the perpetrator will not be at school or will be transferred to other classes or another residence hall for the rest of the year, the complainant may be less likely to want to transfer to another school or change classes, but if the perpetrator will be returning to school after a few days or weeks, or remaining in the complainant's classes or residence hall, the complainant may want to transfer schools or change classes to avoid contact. Thus, the complainant cannot make an informed decision about how best to respond without this information.

<sup>34</sup> Under the FERPA regulations, crimes of violence include arson; assault offenses (aggravated assault, simple assault, intimidation); burglary; criminal homicide (manslaughter by negligence); criminal homicide (murder and



disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed.<sup>35</sup> Additionally, a postsecondary institution may disclose to anyone—not just the alleged victim—the final results of a disciplinary proceeding if it determines that the student is an alleged perpetrator of a crime of violence or a non-forcible sex offense, and, with respect to the allegation made, the student has committed a violation of the institution’s rules or policies.<sup>36</sup>

Postsecondary institutions also are subject to additional rules under the Clery Act. This law, which applies to postsecondary institutions that participate in Federal student financial aid programs, requires that “both the accuser and the accused must be informed of the outcome<sup>37</sup> of any institutional disciplinary proceeding brought alleging a sex offense.”<sup>38</sup> Compliance with this requirement does not constitute a violation of FERPA. Furthermore, the FERPA limitations on redisclosure of information do not apply to information that postsecondary institutions are required to disclose under the Clery Act.<sup>39</sup> Accordingly, postsecondary institutions may not require a complainant to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the redisclosure of this information.

### **Steps to Prevent Sexual Harassment and Sexual Violence and Correct its Discriminatory Effects on the Complainant and Others**

#### **Education and Prevention**

In addition to ensuring full compliance with Title IX, schools should take proactive measures to prevent sexual harassment and violence. OCR recommends that all schools implement preventive education programs and make victim resources, including comprehensive victim services, available. Schools may want to include these education programs in their (1) orientation programs for new students, faculty, staff, and employees; (2) training for students who serve as advisors in residence halls; (3) training for student athletes and coaches; and (4) school assemblies and “back to school nights.” These programs should include a

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non-negligent manslaughter); destruction, damage or vandalism of property; kidnapping/abduction; robbery; and forcible sex offenses. Forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person’s will, or not forcibly or against the person’s will where the victim is incapable of giving consent. Forcible sex offenses include rape, sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses are incest and statutory rape. 34 C.F.R. Part 99, App. A.

<sup>35</sup> 34 C.F.R. § 99.31(a)(13). For purposes of 34 C.F.R. §§ 99.31(a)(13)-(14), disclosure of “final results” is limited to the name of the alleged perpetrator, any violation found to have been committed, and any sanction imposed against the perpetrator by the school. 34 C.F.R. § 99.39.

<sup>36</sup> 34 C.F.R. § 99.31(a)(14).

<sup>37</sup> For purposes of the Clery Act, “outcome” means the institution’s final determination with respect to the alleged sex offense and any sanctions imposed against the accused. 34 C.F.R. § 668.46(b)(11)(vi)(B).

<sup>38</sup> 34 C.F.R. § 668.46(b)(11)(vi)(B). Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person’s will, or not forcibly or against the person’s will where the person is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses include incest and statutory rape. 34 C.F.R. Part 668, Subpt. D, App. A.

<sup>39</sup> 34 C.F.R. § 99.33(c).

discussion of what constitutes sexual harassment and sexual violence, the school's policies and disciplinary procedures, and the consequences of violating these policies.

The education programs also should include information aimed at encouraging students to report incidents of sexual violence to the appropriate school and law enforcement authorities. Schools should be aware that victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of school or campus rules were involved.<sup>40</sup> As a result, schools should consider whether their disciplinary policies have a chilling effect on victims' or other students' reporting of sexual violence offenses. For example, OCR recommends that schools inform students that the schools' primary concern is student safety, that any other rules violations will be addressed separately from the sexual violence allegation, and that use of alcohol or drugs never makes the victim at fault for sexual violence.

OCR also recommends that schools develop specific sexual violence materials that include the schools' policies, rules, and resources for students, faculty, coaches, and administrators. Schools also should include such information in their employee handbook and any handbooks that student athletes and members of student activity groups receive. These materials should include where and to whom students should go if they are victims of sexual violence. These materials also should tell students and school employees what to do if they learn of an incident of sexual violence. Schools also should assess student activities regularly to ensure that the practices and behavior of students do not violate the schools' policies against sexual harassment and sexual violence.

### **Remedies and Enforcement**

As discussed above, if a school determines that sexual harassment that creates a hostile environment has occurred, it must take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects. In addition to counseling or taking disciplinary action against the harasser, effective corrective action may require remedies for the complainant, as well as changes to the school's overall services or policies. Examples of these actions are discussed in greater detail below.

Title IX requires a school to take steps to protect the complainant as necessary, including taking interim steps before the final outcome of the investigation. The school should undertake these steps promptly once it has notice of a sexual harassment or violence allegation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change academic or living situations as appropriate. For instance, the school may prohibit the alleged perpetrator from having any contact with the complainant pending the results of the school's investigation. When taking steps to separate the complainant and alleged perpetrator, a school should minimize the burden on the

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<sup>40</sup> The Department's Higher Education Center for Alcohol, Drug Abuse, and Violence Prevention (HEC) helps campuses and communities address problems of alcohol, other drugs, and violence by identifying effective strategies and programs based upon the best prevention science. Information on HEC resources and technical assistance can be found at [www.higheredcenter.org](http://www.higheredcenter.org).

complainant, and thus should not, as a matter of course, remove complainants from classes or housing while allowing alleged perpetrators to remain. In addition, schools should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling, health, and mental health services, and their right to file a complaint with local law enforcement.<sup>41</sup>

Schools should be aware that complaints of sexual harassment or violence may be followed by retaliation by the alleged perpetrator or his or her associates. For instance, friends of the alleged perpetrator may subject the complainant to name-calling and taunting. As part of their Title IX obligations, schools must have policies and procedures in place to protect against retaliatory harassment. At a minimum, schools must ensure that complainants and their parents, if appropriate, know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

When OCR finds that a school has not taken prompt and effective steps to respond to sexual harassment or violence, OCR will seek appropriate remedies for both the complainant and the broader student population. When conducting Title IX enforcement activities, OCR seeks to obtain voluntary compliance from recipients. When a recipient does not come into compliance voluntarily, OCR may initiate proceedings to withdraw Federal funding by the Department or refer the case to the U.S. Department of Justice for litigation.

Schools should proactively consider the following remedies when determining how to respond to sexual harassment or violence. These are the same types of remedies that OCR would seek in its cases.

Depending on the specific nature of the problem, remedies for the complainant might include, but are not limited to:<sup>42</sup>

- providing an escort to ensure that the complainant can move safely between classes and activities;
- ensuring that the complainant and alleged perpetrator do not attend the same classes;
- moving the complainant or alleged perpetrator to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;
- providing counseling services;
- providing medical services;
- providing academic support services, such as tutoring;

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<sup>41</sup> The Clery Act requires postsecondary institutions to develop and distribute a statement of policy that informs students of their options to notify proper law enforcement authorities, including campus and local police, and the option to be assisted by campus personnel in notifying such authorities. The policy also must notify students of existing counseling, mental health, or other student services for victims of sexual assault, both on campus and in the community. 20 U.S.C. §§ 1092(f)(8)(B)(v)-(vi).

<sup>42</sup> Some of these remedies also can be used as interim measures before the school's investigation is complete.

- arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant’s academic record; and
- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.<sup>43</sup>

Remedies for the broader student population might include, but are not limited to:

*Counseling and Training*

- offering counseling, health, mental health, or other holistic and comprehensive victim services to all students affected by sexual harassment or sexual violence, and notifying students of campus and community counseling, health, mental health, and other student services;
- designating an individual from the school’s counseling center to be “on call” to assist victims of sexual harassment or violence whenever needed;
- training the Title IX coordinator and any other employees who are involved in processing, investigating, or resolving complaints of sexual harassment or sexual violence, including providing training on:
  - the school’s Title IX responsibilities to address allegations of sexual harassment or violence
  - how to conduct Title IX investigations
  - information on the link between alcohol and drug abuse and sexual harassment or violence and best practices to address that link;
- training all school law enforcement unit personnel on the school’s Title IX responsibilities and handling of sexual harassment or violence complaints;
- training all employees who interact with students regularly on recognizing and appropriately addressing allegations of sexual harassment or violence under Title IX; and
- informing students of their options to notify proper law enforcement authorities, including school and local police, and the option to be assisted by school employees in notifying those authorities.

*Development of Materials and Implementation of Policies and Procedures*

- developing materials on sexual harassment and violence, which should be distributed to students during orientation and upon receipt of complaints, as well as widely posted throughout school buildings and residence halls, and which should include:
  - what constitutes sexual harassment or violence
  - what to do if a student has been the victim of sexual harassment or violence
  - contact information for counseling and victim services on and off school grounds
  - how to file a complaint with the school
  - how to contact the school’s Title IX coordinator

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<sup>43</sup> For example, if the complainant was disciplined for skipping a class in which the harasser was enrolled, the school should review the incident to determine if the complainant skipped the class to avoid contact with the harasser.

- what the school will do to respond to allegations of sexual harassment or violence, including the interim measures that can be taken
- requiring the Title IX coordinator to communicate regularly with the school’s law enforcement unit investigating cases and to provide information to law enforcement unit personnel regarding Title IX requirements;<sup>44</sup>
- requiring the Title IX coordinator to review all evidence in a sexual harassment or sexual violence case brought before the school’s disciplinary committee to determine whether the complainant is entitled to a remedy under Title IX that was not available through the disciplinary committee;<sup>45</sup>
- requiring the school to create a committee of students and school officials to identify strategies for ensuring that students:
  - know the school’s prohibition against sex discrimination, including sexual harassment and violence
  - recognize sex discrimination, sexual harassment, and sexual violence when they occur
  - understand how and to whom to report any incidents
  - know the connection between alcohol and drug abuse and sexual harassment or violence
  - feel comfortable that school officials will respond promptly and equitably to reports of sexual harassment or violence;
- issuing new policy statements or other steps that clearly communicate that the school does not tolerate sexual harassment and violence and will respond to any incidents and to any student who reports such incidents; and
- revising grievance procedures used to handle sexual harassment and violence complaints to ensure that they are prompt and equitable, as required by Title IX.

*School Investigations and Reports to OCR*

- conducting periodic assessments of student activities to ensure that the practices and behavior of students do not violate the school’s policies against sexual harassment and violence;
- investigating whether any other students also may have been subjected to sexual harassment or violence;
- investigating whether school employees with knowledge of allegations of sexual harassment or violence failed to carry out their duties in responding to those allegations;
- conducting, in conjunction with student leaders, a school or campus “climate check” to assess the effectiveness of efforts to ensure that the school is free from sexual harassment and violence, and using the resulting information to inform future proactive steps that will be taken by the school; and

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<sup>44</sup> Any personally identifiable information from a student’s education record that the Title IX coordinator provides to the school’s law enforcement unit is subject to FERPA’s nondisclosure requirements.

<sup>45</sup> For example, the disciplinary committee may lack the power to implement changes to the complainant’s class schedule or living situation so that he or she does not come in contact with the alleged perpetrator.

- submitting to OCR copies of all grievances filed by students alleging sexual harassment or violence, and providing OCR with documentation related to the investigation of each complaint, such as witness interviews, investigator notes, evidence submitted by the parties, investigative reports and summaries, any final disposition letters, disciplinary records, and documentation regarding any appeals.

## **Conclusion**

The Department is committed to ensuring that all students feel safe and have the opportunity to benefit fully from their schools' education programs and activities. As part of this commitment, OCR provides technical assistance to assist recipients in achieving voluntary compliance with Title IX.

If you need additional information about Title IX, have questions regarding OCR's policies, or seek technical assistance, please contact the OCR enforcement office that serves your state or territory. The list of offices is available at <http://wdcroboelp01.ed.gov/CFAPPS/OCR/contactus.cfm>. Additional information about addressing sexual violence, including victim resources and information for schools, is available from the U.S. Department of Justice's Office on Violence Against Women (OVW) at <http://www.ovw.usdoj.gov/>.<sup>46</sup>

Thank you for your prompt attention to this matter. I look forward to continuing our work together to ensure that all students have an equal opportunity to learn in a safe and respectful school climate.

Sincerely,

/s/

Russlynn Ali  
Assistant Secretary for Civil Rights

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<sup>46</sup> OVW also administers the Grants to Reduce Domestic Violence, Dating Violence, Sexual Assault, and Stalking on Campus Program. This Federal funding is designed to encourage institutions of higher education to adopt comprehensive, coordinated responses to domestic violence, dating violence, sexual assault, and stalking. Under this competitive grant program, campuses, in partnership with community-based nonprofit victim advocacy organizations and local criminal justice or civil legal agencies, must adopt protocols and policies to treat these crimes as serious offenses and develop victim service programs and campus policies that ensure victim safety, offender accountability, and the prevention of such crimes. OVW recently released the first solicitation for the Services, Training, Education, and Policies to Reduce Domestic Violence, Dating Violence, Sexual Assault and Stalking in Secondary Schools Grant Program. This innovative grant program will support a broad range of activities, including training for school administrators, faculty, and staff; development of policies and procedures for responding to these crimes; holistic and appropriate victim services; development of effective prevention strategies; and collaborations with mentoring organizations to support middle and high school student victims.

## 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.

**Memorandum**

To: Wallace D. Loh, President

Cc: Vincent Novara, Senate Chair

From: Joint President/Senate Task Force on Sexual Harassment Policies and Procedures

Re: Interim Recommendations for Summer 2013

Date: June 10, 2013

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The Joint President/Senate Sexual Harassment Policies and Procedures Task Force (SHTF) was convened in June 2012 and began regular meetings in August 2012. In October 2012, the SHTF engaged consultants to perform an external audit of University policies and procedures regarding sexual harassment, including sexual assault, in order to provide advice and consultation regarding compliance with Title IX and other relevant legal authority. The SHTF recently received the consultants' report and recommendations. The consultants found that the University's current policies and procedures meet Title IX requirements, but they also made a number of recommendations for improved compliance. The SHTF expects to further review this report, complete its work, and issue a final report to the President and University Senate by the fall of 2013. In the meantime, the SHTF recommends that the University take several immediate interim steps to effect key improvements to its Title IX program compliance before the beginning of the 2013–2014 academic year.

Background:

**Title IX**

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.

Federal law requires the designation of a Title IX Coordinator to monitor and oversee the University's overall implementation of Title IX compliance, including sexual harassment and sexual misconduct as recently interpreted by the Office of Civil Rights. The immediate need to improve both Title IX program compliance (particularly in the area of sexual misconduct response and prevention) and campus safety, however, makes it imperative that the University more quickly elevate the role of its existing Title IX

Coordinator by creating a full-time position housed in an independent Title IX Office that reports directly to senior administration. The core duties and responsibilities of a Title IX Coordinator, as set forth in federal regulations (and as interpreted by DOE guidance) include:

- Monitoring and oversight of the University's overall implementation of Title IX compliance.
- Notification, prevention and education of the campus community regarding: (1) Title IX rights and responsibilities, focusing on prohibitions against sexual harassment, sexual assault, and sexual misconduct, (2) relevant University policies, including the processes of filing complaints and invoking grievance procedures), (3) reporting options available both on and off campus, and (4) the existence of available resources, including the health center, counseling center, and rape crisis center.
- Coordinate training for the campus community, which includes: (1) students, faculty, and staff, (2) "responsible employees"/"first responders" who receive complaints, (3) investigators and adjudicators of complaints, and (4) campus law enforcement officers who deal with victims' rights under Title IX , including the right to file Title IX complaints with the University in addition to making a criminal complaint.
- Coordinate the receipt, investigation, and disposition of complaints of alleged sexually discriminatory behavior in violation of Title IX, other federal or state law, or University policies.
- Maintain records and data, issue annual reports, and note trends to enhance Title IX compliance and promote campus safety.

In order to ensure enhanced compliance with federal law and University standards of conduct, the SHTF recommends the following actions be initiated immediately.

1. Identify an Interim Title IX Coordinator from existing University staff/faculty to assume responsibility effective July 1, 2013. Immediate duties and responsibilities would include:
  - a. Working with University Marketing and Communications and the Legal Office to develop clear road maps for students, staff, and faculty that describe the relevant policies and procedures for initiating a complaint, as well as resources currently available to individuals who have experienced any type of sexual misconduct.
  - b. Identifying an array of media/forums in which to distribute this information (including print brochures, social media, and websites) and taking steps to disseminate this material (using residence hall meetings, fraternity/sorority life, athletic teams, learning communities, faculty/staff meetings, and various forms of new student/faculty/staff orientation, etc.).
  - c. Working with the Division of Information Technology to make this information easily accessible on the University website with only one or two clicks and via search terms such as "Title IX Coordinator," "sexual harassment," and "sexual assault." This information should also be available via an obvious URL such as [sexualassault.umd.edu](http://sexualassault.umd.edu)

or sexualmisconduct.umd.edu. Such a website should be easily and obviously accessible through the many points of access to which a distressed member of the campus community might go (e.g., Department of Public Safety, Department of Resident Life, Office of Student Conduct, University Human Resources, Office of Faculty Affairs, etc.).

- d. Working with the Office of the Dean for Undergraduate Studies, the Office of the Dean of the Graduate School, the Division of Student Affairs, the Office of Undergraduate Admissions, and the Department of Intercollegiate Athletics to implement various ways to communicate with incoming students and their parents or guardians about Title IX, campus resources available in the event of sexual misconduct, and applicable UM policies and procedures.
- e. Facilitating, as appropriate, the search for a permanent Title IX Coordinator.
- f. Coordinating with the Sexual Assault Response and Prevention Program (SARPP/CARE) with regard to the training pilot for incoming freshmen in the fall of 2013. This coordination will require facilitating the training pilot, communicating with relevant campus units and programs, and assessing the pilot for possible expanded use
- g. Working with senior administration to establish a Title IX Office, staff, office location, and reporting structure.
- h. Coordinating with the SHTF to maintain clear communication with respect to information gathered by the SHTF, as well as recommendations, legal issues, and implementation issues carefully considered by the SHTF in addition to further goals and strategies to improve campus safety.
- i. Coordinating with the SHTF to designate Deputy Title IX Coordinators to serve as "first responders" and points of contact for designated campus constituencies with complaints, e.g., undergraduate students, graduate students, faculty, and staff.

2. Initiate a formal search for a new full-time, dedicated Title IX Coordinator and Title IX Investigator. The Title IX Coordinator will head a new Title IX Office, reporting to senior administration. A national search for this position should begin as soon as possible with the goal of appointing a new Title IX Coordinator and Title IX Investigator in the fall of 2013.

3. Direct the Legal Office to initiate a review and re-write of the campus policies on sexual harassment and sexual misconduct in accordance with the recommendations of the SHTF, its consultants, and best practices identified by the SHTF, including clarification of the reporting obligations of "responsible employees," with a goal of submitting these revised policies along to the University Senate in fall of 2013.

Approved: Wallace D. Loh 7/14/13

Wallace D. Loh

Date

SUMMARIES OF TRAINING APPROACHES FOR UNIVERSITY EMPLOYEES

**A. University of Iowa**

Type: Mandatory

Summary:

- Sexual Harassment Prevention Training (SHPT) is required for employees (faculty & staff), including all Graduate Students & Teaching Assistants (GRAs, TAs, etc.).
- All new, incoming graduate students are required to take the course during their first semester at the University of Iowa (UI).
- New-hire and refresher sexual harassment prevention training is offered through UI Learning and Development. Both online and instructor-led classes are available. For incoming faculty, TAs, and RAs, it may be beneficial to tie in the training with any orientations the department may have before classes start.
- Departments that would like to schedule their own instructor-led course can contact the Office of Equal Opportunity & Diversity (EOD) at 319-335-0705 or diversity@uiowa.edu to set up a time and date.
- A refresher course of the Sexual Harassment Training (SHPT) must be completed every three calendar years from the date of the most recent training. This applies to all Teaching Assistants, all Research Assistants who deal with students in any capacity, and all faculty and staff appointed at 50% or higher.

<b>Employee Classification</b>	<b>Type of Training Allowed</b>	<b>Deadline to Complete SH Training</b>
Assistant Professors, Lecturers, and Visitors with annual/multi-year appointments	Instructor-led only	By the end of the semester in which they were hired
Staff (hold at least 50% appt.)	Instructor-led or online	By the end of the 6th month in which they were hired
Returning Lecturers, Tenured Professors, Adjunct Faculty (regardless of % FTE), Emeritus Professors with teaching assignments, Visitors with short-term (one semester) appointments, and Post-docs	Instructor-led or online	By the end of the semester in which they were hired
All TAs and any Graduate Research Assistants who deal with students in any capacity	Instructor-led or online	By the 8th week (middle) of the semester in which they were hired. NOTE: Period coincides with evaluation for oral communication competence
Academic Administrative Officers (AAOs)— e.g., Associate Deans, Dean, Department Executive Officers, Directors	Instructor-led or online	By the end of the 2nd month of their appointment

## **B. University of California, all campuses**

Type: Mandatory

### Summary:

Effective January 2005, California's Harassment Training and Education Law — more commonly called Assembly Bill 1825 Regulations or simply AB 1825 — mandates that employers with more than 50 employees provide training in sexual-harassment prevention to supervisors every two years. At the University of California campuses, that category includes faculty and lecturers in addition to supervisory employees in administrative and academic units. The Office of the President selected Workplace Answers (WPA) as a vendor to provide an online training program to all campuses.

- This training must occur for all the above constituents every two years.
- Training must be received within six months for new hires and those promoted to supervisory positions.
- Training is 2-hrs in length.

### Implementation:

- There are several ways to complete the training—online training, taking an instructor-led workshop, or by attending a performance (Berkeley only).
- At Berkeley, the first two options are offered through the Office of the President and the third, and most recently added option (piloted Fall 2012), is offered by the campus's Interactive Theater Program (ITP), a collaboration of CCAC; the vice chancellor for Equity and Inclusion; the Department of Theater, Dance, and Performance Studies; and Staff EEO Compliance. For the theatre option, Berkeley staff and students act out examples of sexual harassment in the workplace — then, still in character, they take questions from the audience about the scenarios.
- The online workshop through Workplace Answers is initiated by sending a personalized course link to the individual's email.

### **C. University of North Carolina, Chapel Hill**

Type: Mandatory

Summary:

The “Preventing Sexual Harassment in the Workplace” workshop is open to all UNC Chapel Hill employees who need an increased awareness and understanding of sexual harassment prevention. The goal of the “Preventing Sexual Harassment in the Workplace” workshop course is to enable participants to understand what sexual harassment is; identify inappropriate workplace behaviors, increase awareness and employ strategies to prevent it. The class will also clarify organizational and administrative liability and responsibility, highlight the University’s sexual harassment policies and procedures, and provide guidelines and resources for reporting and responding to sexual harassment.

- The program is mandatory for managers, supervisors, and department chairs. New managers and supervisors should complete the training within thirty days of their start date.
- “Preventing Sexual Harassment” is also offered as an online training program.
- The online training includes a Mastery Test (for Supervisors, Non-Supervisors, Faculty, Student Employees, and Students), which displays a test taker’s score and feedback on the answers below each question. At the end of the test, the program will create a Completion Certificate with the test taker’s name and score.

Implementation:

- The workshop is offered via an online platform.
- Staff members must input their department number and “ONYEN” number prior to stating the online workshop.

## SUMMARIES OF TRAINING APPROACHES FOR UNIVERSITY STUDENTS

**A. University of Illinois, Urbana-Champaign (UIUC)**

Type: Required

Summary:

In 1996, UIUC adopted a required sexual assault awareness program for all first year students. The First-Year Campus Acquaintance Rape Education program (FYCARE) presents incoming students with important information related to sexual assault, available resources on campus and within the community, and strategies to increase your personal safety. The workshops are facilitated by fellow students to ensure a comfortable environment as you discuss sensitive issues, such as gender differences in communication and the role of alcohol in decision-making.

- Approximately 8,500 entering students take the training (freshman & transfer students)
- The program is offered through the Women's Resource Center on campus.
- Registration for the CARE workshop is open from September to November each year online.
- FYCARE achieves an approximately 90% completion rate each year.
- Workshops are conducted in-person and are 2-hours in length.

Implementation:

- Information about FYCARE is included in the welcome packages sent to incoming students.
- Registration and participation is tracked by a Graduate Assistant with the Women's Resource Center that has been given the list of all incoming students.
- The workshop is delivered by paid undergraduate students trained by the Women's Resource Center.
- Participants must sign-in at the beginning of the workshop and those that do not attend are sent repeated follow-up emails.
- Participants do not complete a test at the end of the workshop, but they are sent follow-up surveys six months after the training to gauge their ability to understand the material and their general thoughts on the training.

Evaluation:

- A study published in 2000 in *Psychology of Women Quarterly* evaluated the impact of the FYCARE program.
  - Questionnaires were administered to several groups, including groups of students that had recently received the training, those that received it 4-6 months prior and those that had not yet received it.
  - Using a one-way ANOVA, the most positive impact identified was in the group that had just recently received the training.



## **B. University of Montana**

Type: Mandatory

### Summary:

In 2012, the University of Montana adopted a required online tutorial for students called PETA (Personal Empowerment through Self Awareness). According to their website, PETA is the “cornerstone of UM’s campaign to address issues of sexual violence. It is an online tutorial designed to educate the entire campus community”.

- The mandatory tutorial was created via a collaborative effort between students, faculty and staff: <http://www.umt.edu/petsa/>
- As of March 2013, almost 14,000 students have completed PETA.
- The tutorial is comprised of seven short videos and a quiz at the end. The topics discussed are entitled: The Law, Consent, Predatory Behavior, Myths & Facts, Personal Empowerment, Stand Up Don’t Stand By, Take Action.
- The tutorial takes 20-30 minutes to complete.
- The President of the University offers both opening and closing remarks for the tutorial.

### Implementation:

- All students (regardless of standing) must complete the tutorial or they will be unable to register for their Spring semester.
- Videos are a part of the online learning experience that students at the University of Montana are required to complete. The students view the videos and complete a quiz to meet PETA requirements. The videos included in the tutorial can be found here: <http://www.umt.edu/petsa/videos/default.php>
- The President of the University of Montana has required that students must earn 100% on the quiz before they can register for the second semester.
- The University of Montana uses an incentive based system to encourage students to complete the tutorial as quickly as possible. If completed within the first three weeks of the Fall semester, a student is entered into a raffle to potentially win a \$500 bookstore certificate.
- Students authenticate to take the tutorial online.

### **C. University of North Carolina, Chapel Hill (UNC)**

Type: Voluntary

Summary:

The HAVEN (Helping to Advocate for Violence Ending Now) program is a partnership between UNC and Duke University. Its stated purpose is to broaden the net of possible support/referral points by training students and staff to become informed allies for members of the campus community that have been affected by relationship abuse, sexual abuse and stalking.

- Registration for HAVEN training is completed online.
- HAVEN is sponsored by the Carolina Women's Center, the Office of the Dean of Students and the Interpersonal Violence Prevention Coordinator.
- The HAVEN website also provides lists of members of the faculty and student body that have undergone HAVEN training and are available to assist anyone that needs information or help.
- HAVEN trainings are 4 hours long and are located on the UNC-Chapel Hill Main Campus.
- Separate training are offered for graduate students, but graduate students are also allowed to attend a regular student OR staff training if preferred.
- Those that complete HAVEN training are given a door sign signifying that individual as a trained source of support or information for those with questions or experience related to abuse.

Implementation:

- Registration is done online and the training is in-person.
- Given the voluntary nature of the HAVEN program, there is no penalty for a lack of participation.
- The workshop is delivered by paid specialized staff that supervises peer educators who are co-facilitators. The specialized staff only facilitates the staff/faculty trainings.
- Participants are given pre and post follow-up surveys.
- The training certification manuals are tweaked regularly, but process evaluations sometimes lead to larger changes each year.




UNIVERSITY OF  
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## Memorandum

**To:** Cynthia Hale, Chair, Joint President/Senate Sexual Harassment Task Force

**From:** Martha Nell Smith, Chair of the University Senate 

**Date:** February 6, 2013

**Re:** Proposal to Mandate Sexual Assault Prevention Education for Students  
(Senate Doc. No. 12-13-40)

The Senate Executive Committee (SEC) requests that the Sexual Harassment Task Force review the attached proposal, "Proposal to Mandate Sexual Assault Prevention Education for Students."

The Senate Executive Committee reviewed the proposal at its February 1, 2013 meeting. Members of the SEC raised concerns about the startling statistics noted by the proposers and would like this issue to be reviewed more closely. However, we agreed that the concerns raised align closely with the work of the task force. Therefore, the SEC requests that the Sexual Harassment Task Force review the proposal and consider whether sexual assault prevention education should be mandated for all students. We request that you report on any actions related to this request and incorporate that into your report scheduled to come to the SEC on March 30<sup>th</sup>. If you have any questions regarding this request, please contact Ms. Reka Montfort at x55804 or [reka@umd.edu](mailto:reka@umd.edu).

Attachment

MNS/rm

**University Senate  
PROPOSAL FORM**

<b>Name:</b>	Lauren Redding
<b>Date:</b>	January 27, 2013
<b>Title of Proposal:</b>	Proposal to Mandate Sexual Assault Prevention Education
<b>Phone Number:</b>	240-285-0097
<b>Email Address:</b>	laurredding@gmail.com
<b>Campus Address:</b>	1706 Hampshire Green Lane, Apt. 34, Silver Spring MD, 20903
<b>Unit/Department/ College:</b>	Philip Merrill College of Journalism
<b>Constituency (faculty, staff, undergraduate, graduate):</b>	Undergraduate student
<b>Description of issue/concern/policy in question:</b>	According to VI-1.30(A) UNIVERSITY OF MARYLAND PROCEDURES ON SEXUAL ASSAULT AND MISCONDUCT, " <u>The University is committed to educating the campus community about the nature and consequences of sexual misconduct.</u> " The policy pledges a commitment to prevention education, yet does nothing to make sure every student receives this critical information. This university policy should be amended to mandate sexual assault prevention education for every incoming student (freshmen and transfer) to address this urgent issue.
<b>Description of action/changes you would like to see implemented and why:</b>	According to the Department of Justice, 1 in 5 female students will become a victim of sexual violence during her time in college. 1 in 5 women will also be in an abusive relationship during college. According to a 2000 University of Maryland study, 13.8 percent of UMD women will be a victim of rape during their time on this campus. Sexual assault is not just a women's issue: One in seven men will

	<p>also be sexually assaulted while in college.</p> <p>This is a serious problem on this campus. From 2011-2012, the university's Sexual Assault Response and Prevention Program (SARPP) saw 76 new clients — including 20 rape victims, 17 sexual assault victims, five gang rape victims, six attempted rape victims, nine relationship violence victims and 12 stalking victims. It's important to note that sexual assault is an extremely underreported crime. Statistically, according to the Department of Justice, only 5 percent of victims report the crime. The 76 clients that SARPP served last year is just the tip of the iceberg.</p> <p>Sexual assault is a complex issue; prevention will not be achieved solely by hanging posters about consent in dorm hallways. Given these startling statistics, the university needs to be more proactive in educating its students about the nuances of this issue, how to get consent, how drinking affects consent, the consequences of sexual assault, etc. SARPP presents on these topics whenever requested, but too many students are missing out on this education. They shouldn't be given the choice of whether or not they want to learn about sexual assault, because it's a reality every student at this university must deal with.</p> <p>Establishing a mandatory sexual assault prevention program is also a component of the Department of Justice grant that SARPP is currently re-applying for. The program will be more likely to receive funding - and likely more funding than previously given - if such a mandate is in place.</p>
<p><b>Suggestions for how your proposal could be put into practice:</b></p>	<p>SARPP currently has 12 student peer educators that are trained over the summer and give presentations on sexual assault when requested by classes, fraternities/sororities, clubs, etc. Freshmen most often hear a SARPP presentation in UNIV100, but the program refuses to mandate what UNIV100 instructors can/can't teach. Additionally, not all students are required to take UNIV100; some students, in programs such as Honors, do not take the course.</p> <p>Several of our peer institutions, including UC Berkeley and Illinois Urbana-Champaign, mandate sexual assault</p>

	<p>prevention education. All incoming students are required to attend a sexual assault presentation by the end of their first semester. UC Berkeley calls it “EmpowerU.” Illinois calls it “First Year Campus Acquaintance Rape Education Program.”</p> <p>At Berkeley, workshops are held throughout the semester; the bulk are scheduled for the beginning of the semester, so students can get them out of the way quickly.</p> <p>The university could implement something similar, where SARPP holds mandatory sessions throughout the semester. The university would need to create some sort of accountability system – likely through tracking UID’s – to ensure every student completes the requirement by his/her first semester.</p>
<p><b>Additional Information:</b></p>	<p>Before submitting a senate proposal, student leaders attempted to establish a program like this in both the orientation office and UNIV100. The head of orientation and UNIV100 for over 30 years, Gerry Strumpf, has been unwilling to provide more than a two-minute video during orientation about sexual assault. We need much more than that to truly keep students safe.</p> <p>High-profile rape cases are happening all over the nation, from state universities (Montana) to elite private colleges (Amherst.) Does UMD require a case like this to finally act? If a high-profile sexual assault does ever happen on this campus, the university won’t be caught scrambling to establish a mandatory program like this.</p> <p>SARPP is 100% supportive of this policy. Fatima Burns and Stephanie Rivero, SARPP coordinator and assistant coordinator, helped draft this policy and have even begun planning how the program will change if this policy is in place.</p> <p>In 2009, the Campus Affairs Committee held its annual safety forum solely on the topic of sexual assault. Although the effort was a good way to raise awareness, only 50 people attended and no policy changes were recommended after the initiative — even though the forum panelists clearly expressed urgency toward this issue. According to the report, one of the panelists from the Office of</p>

	<p>Fraternity/Sorority Life said, “WE’RE READY TO TRY ANYTHING. WE NEED TO DO SO MUCH MORE TO MAKE SURE OUR COMMUNITY IS SAFE FOR ALL OF OUR MEMBERS.” It’s time for the senate to — once and for all — address the issue of sexual assault in a way that will concretely bring about change and protect students.</p> <p>The 2012 Campus Affairs Safety report can be found here: <a href="http://www.senate.umd.edu/sms/index.cfm?event=publicViewBill&amp;billId=134&amp;context=s">http://www.senate.umd.edu/sms/index.cfm?event=publicViewBill&amp;billId=134&amp;context=s</a>.</p>
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***Please send your completed form and any supporting documents to senate-admin@umd.edu or University of Maryland Senate Office, 1100 Marie Mount Hall, College Park, MD 20742-7541. Thank you!***



## University Senate CHARGE

<b>Date:</b>	June 12, 2012
<b>To:</b>	Cynthia Hale Chair, Joint President/Senate Sexual Harassment Policies & Procedures Task Force
<b>From:</b>	Wallace D. Loh <i>Wallace D. Loh</i> President Martha Nell Smith <i>MNS</i> Chair, University Senate
<b>Subject:</b>	Review of the UMCP Sexual Harassment Policies & Procedures
<b>Senate Document #:</b>	11-12-43
<b>Deadline:</b>	December 31, 2012

President Loh and the Senate Executive Committee (SEC) request that this Task Force review the University of Maryland Policy and Procedures on Sexual Harassment (VI-1.20(A)) and determine whether and how they could be improved to comport with prevailing best practices. We are calling for this review because our policy and procedures have not been updated since 2004. The goals of this review are fairness, clarity, and consistency.

Specifically, we ask that you:

1. Consult with representatives of the Office of Diversity Education and Compliance, President's Legal Office, and the Office of Student Conduct on the current procedures for handling cases of sexual harassment.
2. Consult with campus equity officers from various units on campus to understand the current process more fully.
3. Review the definition of sexual harassment to ensure that it comports with current law.
4. Review the consistency of interpretation of the policy and procedures used by the various units on campus.



5. Consult with President's Legal Office concerning possible differences between existing policy and procedures and federal and state mandates.
6. Review and assess the existing appeals process for sexual harassment cases.
7. Review and assess the efficacy, frequency, and scope of the University's sexual harassment training program.
8. Collect input from other campus constituents as necessary.
9. Review and assess similar policies and procedures at our peer institutions.
10. If helpful, engage an outside consultant to assist in review of our existing policies and advise on best practices at other universities.
11. If appropriate, make recommendations for changes in the University's policy and/or procedures.

We ask that you submit your report and recommendations to the Senate Office no later than December 31, 2012. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, extension 5-5804.