



TOPIC: Update: Sexual Misconduct Policy and Initiatives

COMMITTEE: Education Policy and Student Life

DATE OF COMMITTEE MEETING: November 4, 2014

SUMMARY: In order to ensure compliance with a series of federal legislative changes and policy concerns over the last several years, the Office of the Attorney General (OAG) reviewed the System's policies on sexual harassment (VI-1.20) and sexual assault (VI-1.30). The review revealed that those policies were in need of revision. In the spring of 2014, a draft sexual misconduct policy was prepared that would take the place of the System's policies on sexual assault and sexual harassment and follows best practices developed nationally. On June 27, 2014, the Board of Regents approved the USM's new Policy on Sexual Misconduct (VI-1.60).

Since the passage of the policy in June, a USM Workgroup consisting of membership from all institutions and representing many of the different stakeholder perspectives has been focused on the implementation challenges presented by the complex environment of statutory, regulatory, policy and best practice models that are rapidly evolving. The University System of Maryland Student Council (USMSC) has also been engaged in important work to address and improve the culture on our campuses around sexual misconduct.

Today, Dr. Joann Boughman, Senior Vice Chancellor for Academic Affairs, and Mr. Zachary McGee, USMSC President, will update the Committee on work that has been done since the passage of the System's Policy on Sexual Misconduct.

ALTERNATIVE(S): This is an information item.

FISCAL IMPACT: This is an information item.

CHANCELLOR'S RECOMMENDATION: This is an information item.

COMMITTEE RECOMMENDATION: Information Only DATE: November 4, 2014

BOARD ACTION: DATE:

SUBMITTED BY: Joann Boughman 301-445-1992 jboughman@usmd.edu

Checklist for Institutional Sexual Misconduct Policies/Procedures

✓	USM Sexual Misconduct Policy Requirements
	Required Definitions
	Does the institution's policy ¹ define Consent, Dating Violence, Domestic Violence, Retaliation, Sexual Exploitation, Sexual Harassment, Sexual Intimidation, Sexual Misconduct, Sexual Violence, and Stalking?
	Do the institution's policy definitions either mirror or expand the USM definitions?
	Does the institution's policy define Responsible Employee?
	Does the institution's policy identify who qualifies as a Responsible Employee on campus?
	Does the institution's definition of Responsible Employee and identification of Responsible Employees mirror or expand the USM definition?
	If the institution is a residential campus, has the institution identified resident advisors as Responsible Employees? If not, has the institution consulted with its legal counsel on this subject?
	Required Policy Statements
	Does the institution's policy expressly prohibit Sexual Misconduct?
	Does the institution's policy expressly prohibit Retaliation?
	Does the institution's policy expressly identify Sexual Misconduct as a form of sex discrimination?
	Does the institution's policy affirmatively state that the institution must take steps to prevent the occurrence of Sexual Misconduct and remedy its discriminatory effects?
	Does the institution's policy expressly prohibit discrimination on the basis of sex in its education programs and activities?
	Does the institution's policy indicate that "inquiries concerning the application of Title IX may be referred to the institution's Title IX Coordinator or the Office for Civil Rights"?

¹ An institution may have one policy and procedure or multiple policies and procedures. For the purposes of this check list, the word "policy" will be used, even though an institution may elect to have more than one Title IX policy(ies)/procedures.

	Title IX Coordinator/Team
	Does the institution's policy identify a Title IX Coordinator by title, office address, telephone number, and email address?
	Does the institution's policy identify any Title IX team members by title, office address, telephone number, and email addresses?
	Are there mechanisms in place for updating the Title IX Team contact information in a timely manner?
	Is there a practice of providing annual training to the Title IX Coordinator and all Title IX Team Members?
	Are the training opportunities for the Title IX Coordinator and any Title IX Team members documented in writing and maintained by the University?
	Accessibility of Policy
	Is the institution's policy widely distributed to all students, employees, applicants for admission and employment, and other relevant persons?
	Is the institution's policy prominently displayed on the institution's web site and included in publications of general distribution?
	Is the institution's policy available at various locations throughout campus?
	Timeframe
	Does the institution's policy designate timeframes for (1) the institution to conduct a full investigation (2) the parties to receive notice of the outcome, (3) the parties to file an appeal?
	Does the timeframe set forth in the policy specify a period of generally no more than 60 calendar days from the initial report being made through resolution (excluding appeals)?
	Does the institution's policy explain the procedure/circumstances for extending the time beyond the 60-day period?
	Investigative/Adjudicative Procedures
	Does the institution's policy require and set forth procedures for prompt investigation and adjudication of allegations of Sexual Misconduct?
	Does the institution's policy identify who can file a complaint of Sexual Misconduct? Does this include students, employees, and third parties?
	Does the institution's policy explain how to file a complaint?
	Does the institution's policy identify to whom such complaints should be directed?

	If the institution has an amnesty policy, are the relevant portions either incorporated into the policy or cross referenced?
	Does institution's policy expressly allow the parties to be accompanied to Sexual Misconduct proceedings by an advisor of their choice?
	Does the institution's policy expressly set forth the scope of the advisor's role in the process?
	Does the institution's policy specify "preponderance of the evidence" as the standard of review?
	Does the institution's policy afford an investigative and adjudicative process that provides the parties equal opportunity to present relevant witnesses and evidence throughout the process?
	Does the institution's policy afford the parties similar and timely access to information to be used during any process?
	Does the institution's policy list a range of available sanctions, up to and including suspension, dismissal, expulsion, and termination from employment?
	Does the institution's policy provide an appeal process that is equally available to the parties?
	Confidentiality
	Does the institution's policy differentiate between confidential and non-confidential resources?
	Does the institution's policy identify confidential and non-confidential resources on campus?
	Does the institution's policy identify confidential and non-confidential resources off campus?
	Does the institution's policy explain institutional practices regarding confidentiality?
	Interim Measures/Resources
	Does the institution's policy apprise the community of various USM institution resources and education programs, geared to promote the awareness of and eliminate Sexual Misconduct, prevent its recurrence, and remedy its effects?
	Does the institution's policy apprise the institution of community resources and programs, geared to promote the awareness of and eliminate Sexual Misconduct, prevent its recurrence, and remedy its effects?
	Does the institution's policy identify various Interim Measures available

	to both parties and explain to the parties how to request them?
	Does the institution's policy identify options and procedures for immediate and ongoing assistance following an incident of Sexual Misconduct?
	In identifying such resources, does the institution's policy expressly instruct on how to receive guidance regarding the preservation of evidence for the criminal process?
	Does the institution's policy advise on external options for reporting Sexual Misconduct?
	Training
	Does the institution's policy apprise the institution community of various USM institution resources and education programs, geared to promote the awareness of and eliminate Sexual Misconduct, prevent its recurrence, and remedy its effects? Do these educational initiatives contain information regarding what types of conduct constitute Sexual Misconduct, definitions of Consent and prohibited conduct, the institution's procedures, bystander intervention, risk reduction, and the consequences of engaging in Sexual Misconduct?
	Has the institution developed and implemented ongoing prevention and awareness campaigns for all students and employees that address the training components listed above?
	Does the institution's policy advise the community of institutional programs that endeavor to promote the awareness of Sexual Misconduct and prevent its recurrence?
	Has the institution implemented training for the Title IX Coordinator that covers (1) what constitutes Sexual Misconduct, (2) Consent, (3) credibility assessments, (4) counter-intuitive behaviors resulting from Sexual Misconduct, and (5) institutional policies and procedures?
	Has the institution implemented training for persons who are charged with responding to, investigating, or adjudicating Sexual Misconduct? Is this training required for the Title IX Team, Responsible Employees, law enforcement, pastors, counselors, health professionals, resident advisors, complainant advocates, and any others respond to, investigate, and adjudicate Sexual Misconduct? Is this training delivered on at least an annual basis?
	Does the institution maintain records of Title IX trainings for students, faculty, and staff (to include a list of trainees, dates of training, and training content)?

	Practice/Procedures
	Does the institution have mechanisms in place for updating the Title IX Team contact information in a timely manner?
	Does the institution take prompt and appropriate action to investigate Sexual Misconduct?
	Does the institution have a practice to notify the parties concurrently, in writing, about the outcome of the complaint and whether or not Sexual Misconduct was found to have occurred?
	Does the institution have a practice to notify the parties concurrently, in writing, of any changes to the outcome of a Sexual Misconduct investigation?
	Does the institution have a practice that includes counsel review of decisions regarding Sexual Misconduct for legal sufficiency, prior to notifying the parties of the outcome?
	Does the institution have written notice prepared regarding available Interim Measures and a practice of regularly sharing this written document with victims and complainants?
	Does the institution advise parties of existing options for counseling, health, mental health, victim advocacy, legal assistance, and other services available on and off campus?
	Does the institution have written notice prepared regarding resources available complainants and respondents, and a practice of regularly sharing this written document with victims and complainants?
	Does the institution have a practice for notifying the parties, in writing, of how to obtain a no-contact order or a protective order and how to enforce existing no-contact orders or protective orders?
	Does the institution have a practice for explaining the parties' options and rights, as well as institution responsibilities, regarding notification of law enforcement and campus authorities, as well as conduct options?
	Does the institution have a practice for treating all parties equally at all phases of the process?
	Does the institution have mechanisms in place for reporting Clery-reportable crimes?
	Has the institution internally changed the Clery requirements so that instances of Dating Violence, Domestic Violence, and Stalking are separately reportable offenses?
	Has the institution updated its MOU with local law enforcement to make sure the institution is able to meet its Title IX obligations?

	Does the institution maintain records of Sexual Misconduct proceedings?
	Does the institution maintain records of Title IX trainings for Title IX Team Members (to include a list of trainees, dates of training, and training content)?
	Does the institution maintain records of all Title IX trainings for students, faculty, and, staff and others (to include a list of trainees, dates of training, and training content)?
	Do the institution's Responsible Employees promptly report Sexual Misconduct to the Institution's Title IX Coordinator?
	Does the institution deliver Title IX training to all incoming students?
	Does the institution deliver Title IX training to all incoming employees?
	Does the institution have a practice of delivering annual training to all Title IX Team Members, Responsible Employees, law enforcement, pastors, counselors, health professionals, resident advisors, complainant advocates regarding the procedures for reporting and handling complaints of Sexual Misconduct, the institution's procedures, and the parameters of confidentiality?
	Prohibited Content
	Has the institution rid its policy and procedures of any Prohibited Content?

USM Sexual Misconduct Training Matrix

1.Prevention and Awareness	2. Title IX Coordinator, Title IX Team, Investigators, Adjudicators, and any Person Involved in Sexual Misconduct Cases	3. Specific Groups Additional Training Required			
		Law Enforcement	Professional Counselors, Pastoral Counselors, and Non-Professional Advocates	Responsible Employees	Anyone Who Works With Students or Who is Likely to Witness or Report Sexual Misconduct
<u>Audience</u> Students and Employees	<u>Audience</u> Title IX Coordinator, Title IX Team, Investigators, Adjudicators, and any Person Involved in Sexual Misconduct Cases	<u>Audience</u> Law Enforcement Personnel	<u>Audience</u> Professional Counselors, Pastoral Counselors, and Non-Professional Advocates	<u>Audience</u> Responsible Employees	<u>Audience</u> Anyone who works with students or who is likely to witness or report Sexual Misconduct. This includes, but is not limited to, teachers, law enforcement, athletic coaches, school administrators, counselors, general counsel, health personnel, and resident assistants
<u>Frequency</u> <ul style="list-style-type: none"> • Required one time for all incoming students • Required one time for all new employees • Ongoing prevention and awareness campaigns required for both students and employees 	<u>Frequency</u> Annual Training Required	<u>Frequency</u> Training should be provided on a “regular basis.” <i>2014 DCL at 39.</i>	<u>Frequency</u> Training should be provided on a “regular basis.” <i>2014 DCL at 39.</i>	<u>Frequency</u> Training should be provided on a “regular basis.” <i>2014 DCL at 39.</i>	<u>Frequency</u> Training should be provided on a “regular basis.” <i>2014 DCL at 39.</i>

<p><u>Content*</u></p> <ul style="list-style-type: none"> • What constitutes Sexual Misconduct • Definition of Consent • Examples of Consent • Prohibited conduct • Institutional procedures • Bystander intervention • Consequences of engaging in Sexual Misconduct • How the school analyzes whether conduct was unwelcome under Title IX • How the school analyzes whether sexual conduct creates a hostile environment • Reporting options (law enforcement and institutional reporting options) • Identification of Responsible Employees • Identification of confidential resources • Prohibitions against Retaliation • Training should encourage student reporting • A statement that the institution prohibits Domestic Violence, Dating Violence, Sexual Assault, and Stalking • Definitions of Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Consent • Information on risk reduction, warning signs of abusive behavior, and methods to avoid potential attacks • Effects of trauma, including neurobiological changes • Role of drugs and alcohol in Sexual Violence, including the deliberate use of alcohol and/or other drugs to perpetrate Sexual Violence <p><i>See BOR §5.A, 2011 DCL at 15; 2014 DCL at 42; and VAWA.</i></p>	<p><u>Content*</u></p> <ul style="list-style-type: none"> • Institutional requirements of Title IX • What constitutes Sexual Harassment, including Sexual Violence • Receiving, reporting, and handling complaints of Sexual Misconduct • Institution’s procedures (including information on the “preponderance of the evidence” standard of review) • Parameters of confidentiality • Working with and interviewing persons subjected to Sexual Violence • Particular types of conduct that constitute Sexual Violence, including same-sex Sexual Violence • Consent and the role drugs or alcohol can play in the ability to Consent • Information on the link between alcohol and drug abuse and sexual harassment or violence and best practices to address this link • Importance of accountability for individuals found to have committed Sexual Violence • Need for remedial actions for perpetrator, complainant, or community • Information on how to conduct a credibility assessment • Information on how to evaluate and weigh evidence in an impartial manner • Information on how to conduct an investigation • The effects of trauma, including neurobiological change • What constitutes counter-intuitive victim behavior • Cultural awareness training regarding how Sexual Violence may impact students differently depending on their cultural background <p><i>See BOR §5.B; 2011 DCL at 7, 12, 17; and 2014 DCL at 40.</i></p>	<p><u>Content*</u></p> <p>All things listed in Columns 1 and 2, and in addition:</p> <ul style="list-style-type: none"> • Notifying complainants of their right to file a complaint with the Title IX Coordinator • Notifying complainants of their right to file a criminal complaint • Law enforcement responsibilities of handling Sexual Harassment and Sexual Violence complaints <p><i>2011 DCL at 7, 17</i></p>	<p><u>Content*</u></p> <p>All things listed in Columns 1 and 2, and in addition:</p> <ul style="list-style-type: none"> • Parameters of confidentiality in their professional roles as counselors and advocates <p><i>2014 DCL at 38</i></p>	<p><u>Content*</u></p> <p>All things listed in Column 1, and in addition:</p> <ul style="list-style-type: none"> • How to respond appropriately to reports of Sexual Violence • Obligation to report (and to whom the report should be made) • What should be included in a report • Consequences of failing to report • Procedure for responding to student requests for confidentiality • Contact information of Institution’s Title IX Coordinator • Support services available • Practical training about how to prevent and identify sexual violence, including same-sex Sexual Violence • Behaviors that may lead to and result in Sexual Violence • Potential for re-victimization • Appropriate methods for responding to students who have experienced Sexual Violence • Nonjudgmental language <p><i>Note that some Responsible Employees may fall into other categories on the matrix as well and thus require additional training.</i></p> <p><i>2014 DCL at 38.</i></p>	<p><u>Content*</u></p> <p>All things listed in Column 1, and in addition:</p> <ul style="list-style-type: none"> • Recognizing and appropriately addressing allegations of Sexual Harassment and Sexual Violence under Title IX • How to report instances of Sexual Misconduct to institution’s Title IX Coordinator • How to identify warning signs of Sexual Harassment and Sexual Violence • Practical information about how to prevent and identify Sexual Violence • How to identify behavior that may lead to and result in Sexual Violence • Attitudes of bystanders that may allow conduct to continue • Potential for re-victimization by responders • Effects of re-victimization on students • Appropriate methods for responding to a student who may have experienced Sexual Violence, including the use of non-judgmental language <p><i>Note that some employees who fall into this category may also fall into other categories (e.g. law enforcement personnel) and thus</i></p>
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					<i>require additional training.</i> <i>2011 DCL at 4, 6, 17; and 2014 DCL at 38.</i>
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*All Content bullet points in all columns are derived from the USM BOR Sexual Misconduct Policy, the 2011 and 2014 Dear Colleague letters, and VAWA. Where the bullet point is derived solely from sub-regulatory guidance (and not also from law or BOR Policy), the bullet point reflects only training deemed to be a “should” or a “must” in the guidance.

DRAFT

**University System of Maryland
Sexual Misconduct Policy
Workgroup Membership List**

Humberto Aristizabal

Director of Fair Practices & EEO/AA,
Title IX Coordinator
Salisbury University
131 Holloway Hall
1101 Camden Avenue
Salisbury, MD 21801
410-543-6035
hjaristizabal@salisbury.edu

Melanie Barr-Brooks

Assistant General Counsel
University of Maryland University College
Office of the Legal Affairs
3501 University Boulevard East, Suite 3115
Adelphi, MD 20783
301-985-7682
melanie.barr-brooks@umuc.edu

Virletta Bryant

Associate Professor
Coppin State University
Health & Human Services Bldg., Room 351
2500 West North Avenue
Baltimore, MD 21216
410-951-3532
vbryant@coppin.edu

Catherine Carroll

Director, Title IX Officer
Office of Sexual Misconduct & Relationship
Violence
University of Maryland
1103 Reckord Armory
College Park, MD 20742
301-405-1142
carrollc@umd.edu

Joann M. Christopher-Hicks

Interim Vice President
Division of Student Affairs
Coppin State University
Connor Admin. Bldg, 3rd Floor - St 327
2500 West North Avenue
Baltimore, MD 21216
410-951-3933
JChristopher-Hicks@coppin.edu

Bill Crockett

Executive Director, SMC Campus Center
University of Maryland, Baltimore
SMC Campus Center, Room 333
621 West Lombard Street
Baltimore, MD 21201
410-706-5743
bcrockett@umaryland.edu

Paul Dillon

Assistant Director, Police
University of Maryland, Baltimore County
Academic IV
1000 Hilltop Circle
Baltimore, MD 21250
410-707-6012
pdillon@umbc.edu

Barbara English

Associate University Counsel
Towson University
Administration Building, Room 204
8800 York Road
Towson, MD 21252
410-704-6062
benglish@towson.edu

Steve Fetter

Associate Provost for Academic Affairs
University of Maryland
1119 Main Administration Building
College Park, MD 20742
301-405-5793
sfetter@umd.edu

David Gleason

General Counsel
President's Office
University of Maryland, Baltimore County
Administration Bldg., Room 1012
1000 Hilltop Circle
Baltimore, MD 21250
410-455-2709
gleason@umbc.edu

**University System of Maryland
Sexual Misconduct Policy
Workgroup Membership List**

Sheila Hobson

Senior Director of Human Resources
Bowie State University
14000 Jericho Park Road
Bowie, MD 20715
301-860-3451
Shobson@bowiestate.edu

Anthony Jenkins

Vice President of Student Affairs and
Enrollment Management
University of Maryland Eastern Shore
Maryland Route 822, UMES Boulevard
Princess Anne, MD 21853
aljenkins@umes.edu

Diane Krejsa

Deputy Chief Counsel and Chief of Staff
Office of Legal Affairs
University of Maryland
2101 Main Administration Building
College Park, MD 20742
301-405-4996
dkrejsa@umd.edu

Mary Maher

Assistant VP for Human Resources
University of Baltimore
1420 N. Charles Street
Baltimore, MD 21201
410-837-5392
mmaher@ubalt.edu

Zachary McGee

President
USM Student Council
zmcgee11@gmail.com

Lisa Ross

Director of Human Resources
University of Maryland Center for
Environmental Science
2020 Horns Point Road
P.O. Box 775
Cambridge, MD 21613
410-221-2017
lross@umces.edu

Cynthia Smith

Chief, University Police
Frostburg State University
101 Braddock Road
Frostburg, MD 21532
301-687-4223
colsmith@frostburg.edu

Karen Treber

General Counsel
Frostburg State University
Office of the President
Hitchins Bldg. 217
101 Braddock Road
Frostburg, Maryland 21532
301-687-4710
ktreber@frostburg.edu

Roger Ward

Chief Accountability Officer
Vice President of Academic Affairs
Vice Dean of the Graduate School
University of Maryland, Baltimore
Office of Academic Affairs
620 West Lexington Street, 5th Floor
Baltimore, MD 21201
410-706-1850
rward@umaryland.edu

Nancy Young

Vice President for Student Affairs
University of Maryland, Baltimore County
The Commons, Room 319
1000 Hilltop Circle
Baltimore, MD 21250
410-455-2393; 410-455-3013
nyoung@umbc.edu

**University System of Maryland
Sexual Misconduct Policy
Workgroup Membership List**

Workgroup Staff

University System of Maryland

Joann Boughman

Sr. Vice Chancellor for Academic Affairs
University System of Maryland
3300 Metzert Road
Adelphi, MD 20783
301-445-1992
jboughman@usmd.edu

JoAnn Goedert

Associate Vice Chancellor
Human Resources
University System of Maryland
3300 Metzert Road
Adelphi, MD 20783
301-445-1921
jgoedert@usmd.edu

Zakiya Lee

Assistant to the Senior Vice Chancellor for
Academic Affairs
University System of Maryland
3300 Metzert Road
Adelphi, MD 20783
301-445-1991
zlee@usmd.edu

**Office of the Attorney General
Educational Affairs Division**

Holly Combe

Assistant Attorney General
Office of the Attorney General
Educational Affairs Division
200 St. Paul Place, 17th Floor
Baltimore, MD 21202
410-576-6423
hcombe@oag.state.md.us

Joy Gaslevic

Assistant Attorney General
Office of the Attorney General
Educational Affairs Division
200 St. Paul Place, 17th Floor
Baltimore, MD 21202
410-576-6559
jgaslevic@oag.state.md.us

Elizabeth Rivera

Assistant Attorney General
Office of the Attorney General
Educational Affairs Division
200 St. Paul Place
Baltimore, MD 21202
410-576-7650
erivera@oag.state.md.us