VI-1.60 - UNIVERSITY SYSTEM OF MARYLAND POLICY ON SEXUAL MISCONDUCT (Approved by the Board of Regents, June 27, 2014; Amended June 19, 2015; Amended June 21, 2019)

PURPOSE & APPLICABILITY

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

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

I. Definitions

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

A. Consent means a knowing, voluntary, and affirmatively communicated willingness to mutually participate in a particular sexual activity or behavior. It must be given by a person with the ability and capacity to exercise free will and make a rational and reasonable judgment. Consent may be expressed either by affirmative words or
actions, as long as those words or actions create a mutually understandable permission regarding the conditions of sexual activity. Consent may be withdrawn at any time. Consent cannot be obtained by force, threat, coercion, fraud, manipulation, reasonable fear of injury, intimidation, or through the use of one’s mental or physical helplessness or incapacity. Consent cannot be implied based upon the mere fact of a previous consensual dating or sexual relationship. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.

B. **Dating Violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

C. **Domestic Violence** means violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant, or by any other person against an adult or youth complainant protected from those acts by domestic or family violence laws of Maryland.

D. **Interim Measures** means reasonably available steps an institution may take to protect the parties while a Sexual Misconduct investigation is pending.

E. **Responsible Employee** includes any employee who (1) has the authority to take action regarding Sexual Misconduct; (2) is an employee who has been given the duty of reporting Sexual Misconduct; or (3) is someone another individual could reasonably believe has this authority or duty. At a minimum, Responsible Employees must include: the Title IX Coordinator and any Title IX Team members, all institution administrators, all non-confidential employees in their supervisory roles, all faculty, all athletic coaches, institution law enforcement, and all other non-confidential first responders.

F. **Retaliation** means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or USM policy relating to Sexual Misconduct, or because an individual has made a report, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing related to Sexual Misconduct. Retaliation includes retaliatory harassment.
G. Sexual Assault

*Sexual Assault I. – Non-Consensual Sexual Intercourse*
Any act of sexual intercourse with another individual without Consent. Sexual intercourse includes vaginal or anal penetration, however slight, with any body part or object, or oral penetration involving mouth to genital contact.

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

H. Sexual Coercion means the use of unreasonable pressure in an effort to compel another individual to initiate or continue sexual activity against the individual’s will. A person’s words or conduct are sufficient to constitute coercion if they wrongfully impair another individual’s freedom of will and ability to choose whether or not to engage in sexual activity. Coercion includes but is not limited to intimidation, manipulation, threats of emotional or physical harm, and blackmail. Examples of coercion include threatening to disclose another individual’s private sexual information, or threatening to harm oneself if the other party does not engage in the sexual activity.

I. Sexual Exploitation means taking non-consensual or abusive sexual advantage of another person for one’s own advantage or benefit or for the advantage or benefit of anyone other than the person being exploited.

J. Sexual Harassment is any unwelcome sexual advance, unwelcome request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when: (1) Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual’s employment, evaluation of academic work, or participation in any aspect of a USM or USM institution program or activity; (2) Submission to or rejection of such conduct by an individual is used as the basis for academic, employment, or activity or program participation related decisions affecting an individual; or (3) Such conduct has the purpose or effect of unreasonably interfering with an individual’s work or academic performance, i.e., it is sufficiently severe or pervasive to create an intimidating, hostile, humiliating, demeaning or sexually offensive working, academic, residential or social environment.

K. Sexual Intimidation means (1) threatening to sexually assault another person; (2) gender or sex-based Stalking, including cyber-Stalking; or (3) engaging in indecent exposure.
L. **Sexual Misconduct** is an umbrella term that includes Dating Violence, Domestic Violence, Sexual Exploitation, Sexual Harassment, Sexual Intimidation, Sexual Violence, and Stalking.

M. **Sexual Violence** is a form of Sexual Harassment and refers to physical sexual acts perpetrated without Consent. Sexual Violence includes rape, Sexual Assault, sexual battery, and Sexual Coercion.

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

II. **Institutional Obligations**

A. **Title IX Compliance Oversight**

1. **Title IX Coordinator**

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

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

2. **Title IX Team**

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

B. **Notice of Nondiscrimination**

1. **Content**

Each institution must publish a notice of nondiscrimination that contains the following content:
1. **Title IX** prohibits the institution from discriminating on the basis of sex in its education program and activities;

2. Inquiries concerning the application of Title IX may be referred to the institution’s Title IX Coordinator or the Office for Civil Rights; and

3. The Title IX Coordinator and any Title IX Team Member’s title, office address, telephone number and email address. The institution’s web site must be kept up to date with the name of the institution’s current Title IX Coordinator.

2. **Dissemination of Notice**

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

C. **Prompt Investigation and Resolution**

1. **Investigation**

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

2. **Prompt Resolution**

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

   a. In this subsection, “prompt” generally means within 60 calendar days from the time a report is brought to the institution’s attention until an initial decision is rendered.

   b. There may be circumstances that prevent an institution from meeting the 60-day timeline. When an institution is unable to meet the 60-day timeline, the institution should document the reasons why it was
unable to meet the 60-day timeline.

3. **Notice of Outcome**

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

**D. Policy & Procedures**

1. **General**

   a. Each institution shall adopt and publish policies and procedures, as needed, that:

      i. Prohibit Sexual Misconduct;

      ii. Prohibit Retaliation against any individual who reports, testifies, assists, or participates in any manner in a Sexual Misconduct investigation, hearing, or proceeding;

      iii. Maintain employee and student procedures that provide for the prompt and equitable reporting, investigation, and adjudication of Sexual Misconduct and/or Retaliation cases;

      iv. Require prompt Interim Measures be implemented, as necessary, to protect the parties during the investigation and adjudication processes;

      v. Apprise the institution community of various USM institution resources and education programs, as well as other community resources and programs, geared to promote the awareness of and eliminate Sexual Misconduct, prevent its recurrence; and, as appropriate, remedy its effects; and

      vi. Are easily understood, easily located, and widely distributed.

   b. Each institution shall ensure that Sexual Misconduct cases undergo an appropriate legal sufficiency review by counsel prior to any decision.
2. **Required Content**

At a minimum, policies and procedures must:

a. Include a statement prohibiting Sexual Misconduct and Retaliation;

b. Define Consent, Dating Violence, Domestic Violence, Retaliation, Sexual Harassment, Sexual Exploitation, Sexual Intimidation, Sexual Misconduct, Stalking, and Sexual Violence;

c. Identify Responsible Employees required to report any knowledge of Sexual Misconduct to the Title IX Coordinator;

d. Identify confidential and non-confidential medical, counseling and advocacy resources on and off campus to assist individuals affected by Sexual Misconduct, including sexual assault centers, victim advocacy offices, women’s centers, and health centers;

e. Identify options and procedures for immediate and ongoing assistance following an incident of Sexual Misconduct, including encouragement to obtain immediate medical help and notify law enforcement as appropriate (especially to receive guidance in the preservation of evidence needed for proof of criminal assaults and the apprehension and prosecution of assailants), institution resources available to help obtain such medical or law enforcement assistance, and available Interim Measures;

f. Detail the following:

   i. Identify who can file a complaint of Sexual Misconduct with the institution (to include students, institution employees, and third parties);

   ii. Explain how to file a complaint;

   iii. Identify to whom such complaints should be directed;

   iv. Describe any institutional policies governing confidentiality;

   v. Identify the institution’s amnesty policy for parties or witnesses who violate drug use, alcohol or other student conduct policies. At a minimum, institutions must have an amnesty policy that prohibits student conduct action (except for a mandatory intervention for substance abuse) for a violation of alcohol or drug use policies by a student who reports Sexual Misconduct to the institution or law enforcement.
enforcement or participates in a Sexual Misconduct matter as a witness, if the institution determines that (1) the violation occurred during or near the time of the alleged Sexual Misconduct; (2) the student made the report of Sexual Misconduct, or is participating in an investigation as a witness, in good faith; and (3) the violation was not an act that was reasonably likely to place the health or safety of another individual at risk;

vi. Inform the parties about Interim Measures and how to request them. Each institution must provide notice, in writing, to the parties about options for, and available assistance in, obtaining no contact or protective orders, enforcing existing and lawful no contact or protective orders, and changing academic, transportation, residential, and working situations, if such an accommodation is reasonably available. The institution also must advise the parties of existing options for counseling, health, mental health, victim advocacy, legal assistance, and other services available on and off campus;

vii. Explain the parties’ options and rights, as well as institution responsibilities, regarding notification of law enforcement and campus authorities, as well as student conduct options;

viii. Afford an investigative process and adjudicative process that provides the parties equal opportunity to present relevant witnesses and evidence throughout the process, and affords the parties similar and timely access to information to be used during any process;

ix. Explain that the parties are entitled to the same opportunities to have others present during an institution disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an adviser of their choice, and explain the scope of any adviser’s role or potential involvement;

x. Specify “preponderance of the evidence” as the standard of review, which shall be the same standard of review that is used in other disciplinary proceedings at the institution for allegations of code of conduct violations involving discrimination or harm to another individual;

xi. Identify the range of possible employment and student sanctions for those found responsible for Sexual Misconduct,
up to and including suspension, dismissal, expulsion and termination of employment;

xii. Provide an appeal process that is equally available to the parties;

xiii. Require the institution, after a legal sufficiency review, to inform the parties, concurrently and in writing, as permitted by law, about the outcome of any investigation, adjudication, and appeal conducted under this policy;

xiv. Designate reasonably prompt timeframes for the major stages of the process, and set forth the procedure for extending such timeframes, to include the timeframes within which (1) the institution will conduct a full investigation, (2) the parties will receive a notice of outcome, and (3) the parties may file an appeal;

xv. Provide an affirmative statement to the institution community that the institution will take steps to prevent the occurrence of any Sexual Misconduct and remedy its discriminatory effects;

xvi. Advise the community of institutional programs that endeavor to promote the awareness of Sexual Misconduct and prevent its occurrence; and

xvii. Advise the community of external options for reporting Sexual Misconduct, including local law enforcement, the Equal Employment Opportunity Commission and the U.S. Department of Education Office for Civil Rights;

g. Include a description of the rights of a student who alleges a violation of, or a student who responds to an allegation of a violation of, the institution’s sexual misconduct policies, including:

i. Treatment with dignity, respect, and sensitivity by institution officials during all phases of the disciplinary proceedings;

ii. A fair and impartial investigation;

iii. Disciplinary proceedings and resolutions that are prompt and equitable and provide an opportunity for the parties to be heard;
iv. Timely written notice of:
   1. The reported violation, including the date, time, and location of the alleged violation, and the range of potential sanctions associated with the alleged violation;
   2. The party’s rights and responsibilities under the institution’s sexual misconduct policies and procedures and information regarding other civil and criminal options;
   3. The date, time, and location of each hearing, meeting, or interview that the party is required or permitted to attend;
   4. A final determination made by the adjudicating official or body regarding whether a policy violation occurred and the basis for the determination;
   5. Any sanction imposed, as permitted by law; and
   6. The party’s rights to appeal and a description of the appeal process;

v. Participation in the disciplinary proceedings, including:
   1. Access to the case file and evidence regarding the incident obtained by the institution during the investigation or considered by the adjudicating official or body, with personally identifiable or other information redacted as required by applicable law;
   2. Offering testimony at a hearing or, if the institution’s process does not include a hearing, to the adjudicating official;
   3. Submitting evidence, witness lists, and suggested specific questions to be posed to the other party involved in the disciplinary proceedings by investigators or the adjudicating official or body;
   4. Providing and reviewing testimony electronically or in a way in which the parties are not required to be in the physical presence of one another;
   5. Reviewing and providing written responses to reports and proposed findings; and
   6. Appealing a determination or sanction;

vi. Assistance by a licensed attorney, an advocate supervised by an attorney, or a trained advocate throughout the disciplinary proceedings, including by the attorney or advocate’s:
   1. Attendance at hearings, meetings, and interviews with the party;
2. Private consultations with the party during hearings, meetings, and interviews, except during questioning of the party at a hearing; and

3. Assistance with the party’s exercise of any right during the disciplinary proceedings; and

vii. Notwithstanding whether a student accesses counsel paid for by the Maryland Higher Education Commission (MHEC) as described in Section II.D.2.j of this Policy, the presence of no more than two people, including a personal supporter of the party’s choice, an attorney, or an advocate, at any hearing, meeting, or interview during the disciplinary proceedings;

h. Provide a student party with notice, presented in an appropriate and sensitive format, before the start of the disciplinary proceedings, of:

i. The student’s right to the assistance of an attorney or an advocate;

ii. The legal service organizations and referral services available to the student; and

iii. The student’s right to have a personal supporter of the student’s choice at any hearing, meeting, or interview during the disciplinary proceedings;

i. Permit the use of mediation or other informal mechanisms for resolving a complaint if:

i. A complaining student requests an informal mechanism;

ii. All parties to the complaint, and the institution, agree to the use of the informal mechanism;

iii. The institution participates in the informal mechanism by providing trained staff;

iv. Any party may end the informal mechanism at any time in favor of a formal resolution proceeding; and

v. The alleged misconduct does not involve Sexual Assault or Sexual Coercion; and

j. Permit a current or former student who makes a complaint or responds to a complaint on which a formal Title IX investigation is initiated, and who was enrolled as a student at the institution at the time of the
incident that is the basis of the complaint, to access counsel paid for by MHEC, unless the student knowingly and voluntarily chooses not to have counsel, and provide that in accordance with COMAR 13B.09.01:

i. A student may select and retain an attorney before the conclusion of the formal Title IX proceedings;

ii. A student may obtain from MHEC, through MHEC’s website, a list of licensed attorneys who have indicated that they will represent such students in Title IX proceedings on a pro bono basis or for reduced legal fees; and

iii. A student’s attorney may seek reimbursement of certain legal costs and fees from MHEC’s Legal Representation Fund for Title IX Proceedings, subject to the availability of funding.

3. **Prohibited Content**

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

a. Requirement that the parties attempt to resolve any Sexual Misconduct matter informally;

b. Requirement for or allowance of mediation or other informal mechanisms for resolving a complaint in Sexual Assault cases, or Sexual Coercion cases where the complainant is a student;

c. Allowing a party to personally cross-examine the other party, if an institution allows cross-examination;

d. Allowing or requiring the institution to wait until a concurrent law enforcement proceeding concludes to begin any Sexual Misconduct investigation, Interim Measures or adjudication;

e. Allowing questioning or evidence about the complainant’s sexual history with anyone other than the respondent during any adjudication proceeding (in a proceeding where such evidence or questioning may be appropriate);

f. Allowing questioning or evidence about a student respondent’s prior sexual history with anyone other than the complainant during any adjudication proceeding, except to:
i. Prove the source of injury;
ii. Prove prior sexual misconduct;
iii. Support a claim that a student has an ulterior motive; or
iv. Impeach a student’s credibility after that student has put his or her own prior sexual conduct at issue;
g. Allowing questioning or evidence during any adjudication proceeding about a student’s history of mental health counseling, treatment, or diagnosis, unless the student consents;
h. Discouraging a student from retaining an attorney as described in Section II.D.2.j of this Policy; and
i. Discouraging a reporter from notifying local law enforcement of alleged Sexual Misconduct.

III. Clery Act Compliance

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

IV. Agreements with Local Law Enforcement & Rape Crisis Programs

Each institution must, at a minimum, pursue formalized agreements with (1) the institution’s local law enforcement agency and (2) a State designated rape crisis program and/or federally recognized sexual assault coalition. Agreements with law enforcement agencies must comply with Title IX and clearly state when an institution will refer a matter to a local law enforcement agency. Agreements with rape crisis or sexual assault programs must formalize a commitment to provide trauma-informed services to victims of sexual assault and to improve the institution’s overall response to sexual assault.

V. Training

A. Prevention and Awareness Education

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

B. Training for Persons Involved in Sexual Misconduct Cases

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

VI. Campus Sexual Assault Climate Survey

On or before March 1, 2016, and at least every two (2) years thereafter, each institution shall: (1) develop an appropriate Sexual Assault campus climate survey using nationally recognized best practices for research and climate surveys; and (2) administer the Sexual Assault campus climate survey to students in accordance with the procedures set by MHEC. On or before June 1, 2016, and at least every two (2) years thereafter, each institution shall submit to MHEC a report in accordance with the requirements set forth in Md. Code Ann., Educ. § 11-601(g).

VII. Record Keeping

Each institution must keep records of Sexual Misconduct matters, including, but not limited to records of any (1) complaints/reports of Sexual Misconduct; (2) investigation, adjudication and resolution of complaints; (3) training (including, but not limited to, lists of trainees, training dates and content); and (4) related surveys and reports. Records must be maintained in accordance with the institution’s Records Retention Schedule.

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

This policy should be cross-referenced with USM BOR VI-1.50 Policy on the Reporting of Child Abuse & Neglect.