



VI-1.60 - UNIVERSITY SYSTEM OF MARYLAND POLICY ON SEXUAL HARASSMENT (Approved by the Board of Regents, June 27, 2014; Amended June 19, 2015; Amended June 21, 2019; Amended July 22, 2020¹)

PURPOSE AND APPLICABILITY

The University System of Maryland (USM) is committed to providing a working and learning environment free from Sexual Harassment² through training, education, prevention programs, and policies and procedures that promote prompt reporting, prohibit Retaliation, and promote timely, fair, and impartial investigation and resolution in a manner that eliminates the Sexual Harassment, 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.

Federal regulations implementing Title IX of the Education Amendments of 1972 (Title IX) require that USM institutions implement certain procedures when an institution obtains Actual Knowledge of Sexual Harassment in its Education Program or Activity against a person in the United States. Actual Knowledge means notice of Sexual Harassment or allegations of Sexual Harassment to a USM institution's Title IX Coordinator or any official of the institution who has authority to institute corrective measures on behalf of the institution. A USM institution's Education Program or Activity includes locations, events, or circumstances over which a USM institution exercised substantial control over both the Respondent and the context in which the Sexual Harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a USM institution.

¹ This amendment is effective August 14, 2020. On May 6, 2020, the United States Department of Education released new Title IX regulations, effective August 14, 2020 (the "2020 Title IX Regulations"). The 2020 Title IX Regulations require some modifications to this Policy. Several plaintiffs have filed lawsuits seeking to block some of the provisions in the 2020 Title IX Regulations. Should a court strike down, either temporarily or permanently, any portion of the 2020 Title IX Regulations, USM shall make any necessary modifications to this Policy, which will become effective immediately. USM may also revert back to the June 21, 2019, version of this Policy.

² Capitalized terms are defined in this Policy.

This Policy addresses USM institutions' obligations under Title IX and state law. Institutions should additionally prohibit other forms of sexual misconduct under their respective institutional policies, and should implement fair and equitable procedures to address such allegations.

I. Definitions

For purposes of this Policy, the following definitions apply.

- A. **Actual Knowledge** means notice of Sexual Harassment or allegations of Sexual Harassment to a USM institution's Title IX Coordinator or any official of a USM institution who has authority to institute corrective measures on behalf of the USM institution.
- B. **Complainant** is an individual who is alleged to be the victim of Sexual Harassment.
- C. **Education Program or Activity** of a USM institution includes locations, events, or circumstances over which a USM institution exercised substantial control over both the Respondent and the context in which the Sexual Harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a USM institution.
- D. **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.
- E. **Domestic Violence** includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant, or by any other person against an adult or youth Complainant protected from those acts by domestic or family violence laws of Maryland.
- F. **Formal Complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the institution investigate the allegation. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the Education Program or Activity of the institution with which the Formal Complaint is filed. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, by e-mail, or any additional method designated by the institution.
 - 1. **"Document filed by a Complainant"** means a document or electronic submission that contains the Complainant's physical or digital signature,

or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

- G. Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.
- H. Retaliation** means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because an individual has made a report or complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing related to Sexual Harassment. Retaliation includes bringing charges against an individual for violations of other institutional policies that do not involve Sexual Harassment, but arise out of the same facts or circumstances as a report or Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX.
- I. Sexual Assault** means an offense classified as a sex offense in the uniform crime reporting system of the Federal Bureau of Investigation. Sex offenses are any sexual act including Rape, Sodomy, Sexual Assault With An Object, or Fondling directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also, unlawful sexual intercourse.
1. **Rape—(Except Statutory Rape)** The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 2. **Sodomy**—Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 3. **Sexual Assault With An Object**—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 4. **Fondling**—The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 5. **Incest**—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

6. **Statutory Rape**—Nonforcible sexual intercourse with a person who is under the statutory age of consent.³

J. Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Education Program or Activity; or
3. Sexual Assault, Dating Violence, Domestic Violence, or Stalking.

K. 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.

L. Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the institution's educational environment, or deter Sexual Harassment. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

II. Institutional Obligations

A. Response

An institution with Actual Knowledge of Sexual Harassment in its Education Program or Activity against a person in the United States must respond promptly in a manner that is not deliberately indifferent. A response is "deliberately indifferent" if it is clearly unreasonable in light of the known circumstances.

B. Title IX Compliance Oversight

1. Title IX Coordinator

³ The age of consent in Maryland is 16. See Md. Code Ann., Crim. Law §§ 3-301 through 307.

Each USM institution must designate and authorize at least one employee to coordinate its efforts to comply with Title IX and this Policy, and that employee must be referred to as the “Title IX Coordinator.” The Title IX Coordinator is responsible for coordinating the effective implementation of remedies, including Supportive Measures.

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, representatives from campus safety, Student Affairs, the Provost’s Office, and Human Resources, and any other institution employees or third-party contractors, as necessary to fulfill the institution’s obligations under this Policy.

The Title IX Coordinator shall be responsible for coordinating the activities of the Title IX Team.

C. Notice of Nondiscrimination

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

- a. A statement that the institution does not discriminate on the basis of sex in the Education Program or Activity that it operates, the institution is required by Title IX not to discriminate in such a manner, and the requirement not to discriminate extends to admission and employment;
 - b. A statement that inquiries concerning the application of Title IX may be referred to the institution’s Title IX Coordinator or to the Assistant Secretary for Civil Rights of the U.S. Department of Education, or both; and
 - c. The name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator(s).
- 2. Dissemination of Notice.** The notice must be widely distributed to all students, employees, applicants for admission and employment, and other relevant persons (including all unions or professional organizations holding collective bargaining or professional agreements with the institution). The notice must be prominently displayed on the institution’s website and included in publications of general distribution that provide information to students and employees about the institution’s services and

policies, including each handbook or catalog that it makes available to persons entitled to a notification.

D. Each institution shall adopt and publish a policy that:

1. Includes a statement prohibiting Sexual Harassment in its Education Program or Activity;
2. Includes a statement prohibiting Retaliation;
3. Adopts the definitions in this Policy for Title IX Sexual Harassment and defines relevant terms not defined in this Policy, such as consent;
4. Informs victims of a Sexual Assault of the right to file criminal charges with the appropriate law enforcement officials;
5. Provides for the prompt assistance of institution authorities, at the request of the victim, in notifying the appropriate law enforcement officials and the Title IX Coordinator of an incident of Sexual Assault;
6. Designates the nearest hospitals equipped with the Maryland Department of State Police Sexual Assault Evidence Collection Kit;
7. Informs victims of the importance of preserving evidence as may be necessary to prove criminal conduct or obtain orders of protection;
8. Provides for full and prompt cooperation from institution personnel in obtaining appropriate medical attention, including transporting a victim to the nearest designated hospital;
9. Offers counseling to a victim of Sexual Assault from mental health services provided by the institution, other victim service entities, or the nearest State-designated rape crisis program;
10. Provides for, after a Sexual Assault has been reported, and upon the request of the alleged victim, the transfer of the alleged victim to alternative classes or housing, if such alternatives are available and feasible;
11. Identifies 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 Harassment to the institution or law enforcement or participates in a Sexual Harassment matter as a witness, if the institution determines that:

- a. the violation occurred during or near the time of the alleged Sexual Harassment;
- b. the student made the report of Sexual Harassment, or is participating in an investigation as a witness, in good faith; and
- c. the violation was not an act that was reasonably likely to place the health or safety of another individual at risk.

E. Each institution shall adopt and publish procedures that include the following provisions:

1. Require that, when an institution has Actual Knowledge of Sexual Harassment, the Title IX Coordinator promptly contact the Complainant to:
 - a. Explain the process for filing a Formal Complaint;
 - b. Discuss the availability of Supportive Measures;
 - c. Consider the Complainant's wishes with respect to Supportive Measures; and
 - d. Inform Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint.
2. **Supportive Measures.** Describe the range of Supportive Measures available to Complainants and Respondents.
3. **How to Report Sexual Harassment or Retaliation:**
 - a. Any person may report Sexual Harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute Sexual Harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report;
 - b. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.
4. **Equitable Treatment.** Treat Complainants and Respondents equitably by:
 - a. Providing remedies to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent, and by using procedures that comply with Title IX when investigating and adjudicating allegations of Sexual Harassment before the imposition of any sanctions or other actions that are not Supportive Measures against a Respondent (remedies must be designed to restore or preserve equal access to the institution's Education Program or Activity);

- b. Providing an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence; and
 - c. Applying any provisions, rules, or practices used to investigate and adjudicate complaints under Title IX equally to both parties.
- 5. Objective Evaluation of Evidence.** Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person’s status as a Complainant, Respondent, or witness.
- 6. No Conflict or Bias.** Require that any individual designated as a Title IX Coordinator, investigator, or decision-maker; any decision-making body for a hearing or appeal; or any person designated to facilitate an informal resolution process, not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
- 7. Presumption of Non-Responsibility.** Include a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the process.
- 8. Reasonably Prompt Time Frames.** Include reasonably prompt time frames for conclusion of the investigation and adjudication process—including reasonably prompt time frames for filing and resolving appeals and informal resolution processes (if any)—and a process that allows for the temporary delay of the investigation and adjudication process or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action.
- a. **“Good cause”** may include considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
- 9. Sanctions and Remedies.** Describe the range of, or list, the possible sanctions that may be imposed on a Respondent and the possible remedies that may be provided to a Complainant that the institution may implement following any determination of responsibility.
- 10. Standard of Evidence.** Specify the “preponderance of the evidence” as the standard of evidence, which shall be the same standard of evidence for Formal Complaints against students as for Formal Complaints against employees (including faculty), and apply the same standard of evidence to all Formal Complaints of Sexual Harassment and for all allegations of

institutional policy violations involving discrimination or harm to another individual.

11. Restrictions on Consideration of Certain Evidence.

- a. The institution shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege;
- b. The institution cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the institution obtains that party's voluntary, written consent to do so.
 - i. An adjudicating official or decision-making body is prohibited from considering evidence about a student's history of mental health counseling, treatment, or diagnosis, unless the student consents.

12. Notice. Upon receipt of a Formal Complaint, the institution must provide written notice to known parties:

- a. Of the investigation and adjudication process, including any informal process;
- b. Of the allegations of Sexual Harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
 - i. **"Sufficient details"** include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident, if known;
- c. Of a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the investigation and adjudication process;
- d. That the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence;
- e. Of any provision in the institution's policies that prohibits knowingly making false statements or knowingly submitting false information during the investigation and adjudication process; and
- f. That if the institution decides to investigate additional allegations not included in the original notice, it must provide notice of the additional allegations to the parties whose identities are known.

13. Dismissal of Formal Complaints.

- a. **Mandatory Dismissal.** If the conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved, did not occur in the institution's Education Program or Activity, or did not occur against a person in the United States, then the institution must dismiss the Formal Complaint with regard to that conduct for the purposes of Sexual Harassment under Title IX; such a dismissal does not preclude action under another provision of the institution's policies.
- b. **Permissive Dismissal.** The institution may dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing:
 - i. a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
 - ii. the Respondent is no longer enrolled or employed by the institution; or
 - iii. specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
- c. Upon dismissal, the institution must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

14. Consolidation of Formal Complaints. An institution may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Sexual Harassment arise out of the same facts or circumstances.

15. Investigation of a Formal Complaint. When investigating a Formal Complaint and throughout the investigation and adjudication process, the institution must:

- a. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the institution and not on the parties,
- b. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- c. Provide the parties with the same opportunities to have others present during any investigation or adjudication proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the Complainant or Respondent in

- any meeting or proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the meetings or proceedings, as long as the restrictions apply equally to both parties;
- d. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
 - e. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.
 - i. Prior to completion of the investigative report, the institution must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.
 - ii. The institution must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
 - f. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the hearing, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

16. Live Hearing with Cross-Examination for Formal Complaints.

- a. Institutions must provide for a live hearing for Formal Complaints.
- b. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- c. Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally
- d. At the request of either party, the institution must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to

- simultaneously see and hear the party or the witness answering questions.
- e. Only relevant cross-examination and other questions may be asked of a party or witness.
 - f. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
 - g. If a party does not have an advisor present at the live hearing, the institution must provide without fee or charge to that party, an advisor of the institution's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
 - h. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
 - i. An adjudicating official or body is prohibited from considering a student Respondent's prior sexual history with an individual other than a party to the proceedings, except to:
 - i. Prove prior sexual misconduct;
 - ii. Support a claim that a student has an ulterior motive; or
 - iii. Impeach a student's credibility after that student has put his or her own prior sexual conduct at issue.
 - j. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
 - k. Live hearings may be conducted with all parties physically present in the same geographic location or, at the institution's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
 - l. Institutions must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

17. Determination Regarding Responsibility. The decision-maker(s), who cannot be the same as the Title IX Coordinator or the investigator(s), must issue, simultaneously, a written determination regarding responsibility, which must include:

- a. Identification of the allegations potentially constituting Sexual Harassment;
- b. A description of the procedural steps taken from receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding the application of the institution's policy to the facts;
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any sanctions the institution imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the Education Program or Activity will be provided to the Complainant; and
- f. Procedures and permissible bases for parties to appeal.

18. Appeals. Provide an appeal process that is equally available to the parties and include the procedures and permissible bases for the Complainant and Respondent to appeal;

- a. An institution must offer both parties an appeal from a determination regarding responsibility, and from an institution's dismissal of a Formal Complaint or any allegations therein, on the following bases:
 - i. Procedural irregularity that affected the outcome of the matter;
 - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 - iii. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter;
- b. An institution may offer an appeal equally to both parties on additional bases.
- c. As to all appeals, the institution must:
 - i. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
 - ii. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the

- determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- iii. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- iv. Issue a written decision describing the result of the appeal and the rationale for the result; and
- v. Provide the written decision simultaneously to both parties.

19. Final Decision. The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

20. Informal Resolution Process. Permit the use of mediation or other informal resolution process for resolving allegations of Sexual Harassment subject to the following conditions:

- a. An institution may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints of Sexual Harassment.
- b. An institution may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a Formal Complaint is filed.
- c. At any time prior to reaching a determination regarding responsibility, the institution may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the institution:
 - i. Provides to the parties a written notice disclosing:
 - 1) the allegations,
 - 2) the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the investigation and adjudication process with respect to the Formal Complaint, and
 - 3) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
 - ii. Obtains the parties' voluntary, written consent to the informal resolution process; and

- iii. Does not offer or facilitate an informal resolution process to resolve allegations of Sexual Assault, sexual coercion, or allegations that an employee sexually harassed a student.

21. Confidentiality. Describe any institutional policies governing confidentiality, including that:

- a. Formal investigations must not restrict the ability of either party to discuss allegations or gather and present relevant evidence;
- b. Institutions must maintain as confidential any Supportive Measures provided to the parties, to the extent that maintaining confidentiality would not impair the ability to provide measures; and
- c. Institutions must keep confidential the identity of anyone who has made a report or filed a Formal Complaint of Sexual Harassment, anyone who has been reported as perpetrator, any Respondent, and any witness, except as permitted by FERPA or required by law or to carry out the purposes of the Title IX regulations.

22. Prohibited Content. In addition to other prohibitions, an institution's policies and procedures must not:

- a. Require the institution to wait until a concurrent law enforcement proceeding concludes to begin any investigation, Supportive Measures, or hearing; and
- b. Discourage a student from retaining an attorney.

23. Student Rights. Each Institution's investigation and adjudication procedures shall include a description of the rights of student Complainants and Respondents, including:

- a. Treatment with dignity, respect, and sensitivity by institution officials during all phases of the disciplinary proceedings;
- b. A fair and impartial investigation;
- c. Disciplinary proceedings and resolutions that are prompt and equitable and provide an opportunity for the parties to be heard;
- d. Timely written notice of:
 - i. The reported violation, including the date, time, and location of the alleged violation, and the range of potential sanctions associated with the alleged violation;
 - ii. The party's rights and responsibilities under the institution's policies and procedures and information regarding other civil and criminal options;
 - iii. The date, time, and location of each hearing, meeting, or interview that the party is required or permitted to attend;

- iv. A final determination made by the adjudicating official or body regarding whether a policy violation occurred and the basis for the determination;
 - v. Any sanction imposed, as permitted by law; and
 - vi. The party's rights to appeal and a description of the appeal process;
- e. Participation in the disciplinary proceedings, including:
- i. 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;
 - ii. Offering testimony at a hearing;
 - iii. 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;
 - iv. 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;
 - v. Reviewing and providing written responses to reports and proposed findings; and
 - vi. Appealing a determination or sanction.
- f. 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:
- i. Attendance at hearings, meetings, and interviews with the party;
 - ii. Private consultations with the party during hearings, meetings, and interviews, except during questioning of the party at a hearing; and
 - iii. Assistance with the party's exercise of any right during the disciplinary proceedings; and
- g. Notwithstanding whether a student accesses counsel paid for by the Maryland Higher Education Commission (MHEC), 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 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.

III. Other Federal and State Nondiscrimination Laws

Nothing in this Policy affects institutions' obligations to address, or employees' rights to report, discrimination and retaliation under federal and state nondiscrimination laws.

IV. Clery Act Compliance

In handling Sexual Harassment 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.

V. Agreements with Local Law Enforcement and 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.

VI. 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 Harassment. At a minimum, these educational initiatives must contain information regarding what constitutes Sexual Harassment, definitions of consent and prohibited conduct, the institution's procedures, bystander intervention, risk reduction, and the consequences of engaging in Sexual Harassment. 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 Md. Code Ann., State Pers. & Pens. § 2-203.1.

B. Training for Persons Involved in Sexual Harassment Cases

Institutions must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of Sexual Harassment, the scope of the institution's Education Program or Activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Institutions must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

Institutions also must ensure that investigators receive training on issues of relevance to create investigative reports that fairly summarize relevant evidence.

Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment.

VII. 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).

VIII. Recordkeeping for Sexual Harassment Cases

Each institution must maintain, for seven years, records of:

1. Each Sexual Harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript required, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the Education Program or Activity;
2. Any appeal and the result thereof;
3. Any informal resolution and the result therefrom; and
4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

Each institution must make these training materials publicly available on its website.

Each institution must create and maintain for seven years records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Sexual Harassment. In each instance, the institution must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to its Education Program or Activity. If an institution does not provide a Complainant with Supportive Measures, then it must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the institution in the future from providing additional explanations or detailing additional measures taken.

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