



USM OFFICE POLICY AND PROCEDURES ON SEXUAL MISCONDUCT

(Approved by the Chancellor October 23, 2023)

I. Purpose

The University System of Maryland Office (“USM Office”) is the staff of the Board of Regents. The USM Office is committed to providing and maintaining a working environment free from all forms of sexual misconduct and retaliation. The purpose of this Policy and its accompanying Procedures is to comply with the USM Office’s obligations under USM BOR policy [VI-1.60 University System of Maryland Policy on Sexual Harassment](#) and Title IX of the Education Amendments of 1972 (“Title IX”); define what constitutes Prohibited Conduct under the Policy; describe how to file a complaint; articulate the procedures for investigating and resolving complaints; and identify resources and educational training programs.

II. Applicability

- A. This Policy prohibits certain sexual misconduct and retaliation. This prohibited conduct may be a form of sex discrimination prohibited by federal and state discrimination laws, including Title IX and Title VII of the Civil Rights Act. Title IX provides, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Federal regulations implementing Title IX require that the USM Office establish certain procedures when it obtains actual knowledge of prohibited conduct in its education program or activity against a person in the United States.
- B. This Policy shall not be used to bring baseless, frivolous, or malicious complaints. Disciplinary action may be taken against any person who files a complaint under this Policy in bad faith.
- C. This Policy and its Procedures apply to all employees of the USM Office. It also applies to contractors and other third parties who are engaged in any education program or activity, or who are otherwise interacting with the USM Office, including but not limited to volunteers, vendors, guests, and visitors. This Policy applies to all reports of prohibited conduct occurring on or after the effective date of this Policy¹.

III. Jurisdiction

This Policy and its Procedures apply to reported acts of prohibited conduct committed by or against employees and third parties when the conduct occurs on

¹ If new regulations governing Title IX take effect, this Policy will be amended to reflect the new regulations.

property owned or controlled by the USM Office or occurs in the context of an education program or activity (including employment).

IV. Definitions

For purposes of this Policy and Procedures, the following definitions apply:

- A. **Actual knowledge:** notice of prohibited conduct or allegations of prohibited conduct to the USM Office's Title IX Coordinator.
- B. **Advisor:** a person chosen by a Party to provide advice and consultation to that Party, in accordance with this Policy and Procedures. An Advisor may be an attorney. A Party's Advisor conducts all questioning on behalf of that Party at a hearing, if applicable, in accordance with this Policy and Procedures. If a Party does not have an Advisor for a hearing, the USM Office will provide one without fee or charge. Notice of the identity of any Advisor must be given to the Title IX Coordinator at least 24 hours prior to any meeting or proceeding that the Advisor will attend.
- C. **Appeal Officer:** an individual designated to review decisions concerning responsibility and sanctions. Appeal Officers shall have had no previous involvement with the substance of the formal complaint.
- D. **Complainant:** an individual who is alleged to be the victim of prohibited conduct.
- E. **Consent:** a knowing, voluntary, and affirmatively communicated willingness to participate in a particular sexual activity or behavior. Consent can only be given by a person with the ability or capacity to exercise free will and make a rational and reasonable judgment. Consent may be expressed by words and/or actions, as long as those words and/or actions create a mutually understandable permission regarding the conditions of sexual activity.
- F. **Education program or activity:** the USM Office's operations (including employment) and locations, events, or circumstances over which the USM Office exercises substantial control over both the respondent and the context in which the prohibited conduct occurs.
- G. **Formal complaint:** a document filed by a Complainant or signed by the Title IX Coordinator alleging prohibited conduct against a respondent and requesting that the USM Office investigate the allegation. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by e-mail.
 - 1. **Document filed by a Complainant:** 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.

- H. **Hearing:** a live, formal proceeding attended by the Parties in which evidence is presented, witnesses are heard, and direct and cross-examination occurs, prior to the decision concerning responsibility and sanctions, if applicable.
- I. **Hearing Officer(s):** a person or persons (including a panel) designated to preside over the hearing who has or have decision-making and sanctioning authority within the adjudication process.
- J. **Incapacitation:** an individual's decision-making abilities are impaired such that the individual lacks the ability to understand the "who, what, where, why, or how" of the activity. Incapacitation may result from sleep, unconsciousness, intermittent consciousness, physical restraint, or any other state where the individual is unaware that sexual contact is occurring, such as alcohol or drug use. Where alcohol or drug use is involved, incapacitation is a state beyond intoxication, impairment in judgment, or "drunkenness." Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is incapacitated, and therefore unable to give consent, requires an assessment of whether a reasonable person would understand that the person is substantially incapable of making decisions about the potential consequences of sexual contact, appraising the nature of one's own conduct, communicating consent to sexual contact, or communicating unwillingness to engage in sexual contact.
- K. **Investigator:** a professionally trained USM Office employee or third-party contractor designated to conduct an impartial, fair, and unbiased investigation into an alleged violation of this Policy.
- L. **Party:** the Complainant or the Respondent (collectively, the "Parties").
- M. **Prohibited Conduct:**
1. **Sexual harassment**²: conduct on the basis of sex that satisfies one or more of the following:
 - a) **Quid Pro Quo:** An employee of the USM Office conditioning the provision of an aid, benefit, or service of the USM Office on an individual's participation in unwelcome sexual conduct.
 - b) **Hostile environment:** 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 USM Office's education program or activity.
 - c) **Sexual assault:** An offense classified as a sex offense under the uniform crime reporting system of the Federal Bureau of Investigation:
 - i. **Non-consensual sexual penetration**³: penetration, no matter how slight, genital or anal opening of the body of another person with any body part or object, or oral penetration by a sex organ of

² See 34 C.F.R. § 106.30 (defining "Sexual Harassment" under Title IX).

³ This definition encompasses several offenses within the FBI uniform crime reporting system.

another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

- ii. **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 their age or because of their temporary or permanent mental or physical incapacity.
 - iii. **Incest:** nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - iv. **Statutory rape⁴:** nonforcible sexual intercourse with a person who is under the statutory age of consent.
 - v. **Dating violence:** 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 following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.
 - vi. **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.
 - vii. **Stalking:** engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for their own safety or the safety of others; or (2) suffer substantial emotional distress.
- d) **Retaliation:** intimidating, threatening, coercing, or discriminating against, or otherwise taking an adverse action against an individual for the purpose of interfering with any right or privilege secured by law or USM Office policy relating to prohibited conduct, or because an individual has made a report, filed a complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing related to prohibited conduct. Adverse actions

⁴ The statutory age of consent in Maryland is 16. See Md. Code Ann., Crim. Law §§ 3-301 to 307.

include but are not limited to terminating, refusing to hire, or refusing to promote an individual, or assigning an individual to a lesser position in terms of wages, hours, job classification, or job security.

- M. **Remedies:** actions designed to restore or preserve the Complainant's equal access to the USM Office's education program or activity. Remedies are similar to supportive measures but may be punitive and burden the Respondent.
- N. **Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute prohibited conduct.
- O. **Supportive measures:** 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. 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 employment environment, or deter prohibited conduct. Supportive measures may include counseling, extensions of deadlines, modifications of work schedules, mutual restrictions on contact between the Parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas, and other similar measures.
- P. **Witness:** an individual who possesses information about a matter under investigation. This generally applies to anyone who has witnessed or provides factual information and/or observations regarding prohibited conduct.

V. Sanctions

As further explained in the USM Office Sexual Misconduct Resolution Procedures below, sanctions for Respondents determined to have violated this Policy range from a written reprimand up to and including termination of employment, depending on the circumstances and nature of the violation.

VI. Confidential Resources

Confidential resources assist Parties in navigating potential advocacy, therapy, counseling, and emotional support services. Disclosures or reports made to individuals or entities other than confidential resources are not confidential.

A. Life Crisis Center

Services are available at no charge to all individuals who are victims of domestic violence, rape, sexual assault, and child abuse. The hotline operates 24/7 for anyone in the community needing crisis assistance or referral information.

1. www.lifecrisiscenter.org
2. Maryland's Helpline

- a) Dial 2-1-1 and press 1 for information, referral and crisis intervention.
- b) (410) 749-HELP (4357)
- c) <http://211md.org/>

B. Maryland Coalition Against Sexual Assault (MCASA) Statewide Sexual Assault Information and Referral Helpline

MCASA is a statewide coalition of 17 rape crisis and recovery centers that serve all Maryland jurisdictions. MCASA works to help prevent Sexual Assault, advocate for accessible, compassionate care for survivors of Sexual Violence, and works to hold offenders accountable.

1. Sexual Assault Information and Referral Helpline: 1-800-983- RAPE (7273)
2. <https://mcasa.org/>

C. Maryland Network against Domestic Violence (MNADV)

MNADV is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence. The Network accomplishes this goal by providing education, training resources, and advocacy to advance victim safety and abuser accountability.

1. Address: 4601 Presidents Drive, Suite 300 Lanham, MD 20706
2. National Domestic Violence Hotline: 1-800-799-7233
3. MNADV Office Phone: 301-429-3601
4. Email: info@mnadv.org
5. <https://mnadv.org/>

D. Rape, Abuse & Incest National Network (RAINN)

RAINN is the nation's largest anti-sexual violence organization.

1. National Sexual Assault Crisis Hotline: 800-656-HOPE (4673)
2. <https://www.rainn.org/>

E. Employee Assistance Program (EAP)

The EAP for the USM Office is provided by GuidanceResources.

1. <https://www.guidanceresources.com/groWeb/login/login.xhtml>

VII. Co-occurring Criminal Action

Because the standards for violations of criminal laws are different from the standards for violations of this Policy, criminal investigations and proceedings are not determinative of whether a violation of this Policy has occurred. In other words, conduct may violate this Policy even if law enforcement agencies decline to charge or local prosecutors decline to prosecute. Proceeding with investigation and adjudication of prohibited conduct under this Policy is independent of any criminal investigation or proceeding. Reporting to law enforcement does not preclude a person from proceeding with a report or formal complaint of prohibited conduct under this Policy. In most cases, the USM Office will not wait until a criminal investigation or proceeding is concluded before conducting its own investigation, implementing supportive measures, and taking appropriate action. However, at the request of law enforcement, the Title IX Coordinator may delay its investigation until the initial stages of a criminal investigation are complete. If such a request is made by a law enforcement agency, the agency will submit the request in writing and the Complainant will be notified. The Title IX Coordinator will communicate any necessary delays in the investigative process to both Parties.

VIII. Rights of Parties

- A. Parties will be treated with dignity, respect, and sensitivity by USM Office officials during all phases of the process. Parties will be given timely written notice of:
1. The reported violation, including the date, time, and location, if known, of the alleged violation, and the range of potential sanctions associated with the alleged violation;
 2. Their rights and responsibilities under this Policy, its Procedures, and information regarding other civil and criminal options;
 3. The date, time, and location of each meeting, interview, or hearing that the Party is required or permitted to attend;
 4. The final determination made by the Hearing Officer regarding whether a Policy violation occurred and the basis for the determination;
 5. Any sanction imposed, as permitted by law; and
 6. The rights to appeal and a description of the appeal process.
- B. The parties will be given notice before the start of the resolution process, of their rights to:
1. The assistance of an Advisor, who may be an attorney;
 2. Access to the case file and evidence regarding the incident obtained during the investigation or considered by the Hearing Officer;
 3. Be heard through the process;
 4. Offer testimony at a hearing;

5. Submit evidence, witness lists, and suggest specific questions to be posed to the other Party during the investigation, or to the other Party at a Hearing through the Party's Advisor;
6. Review and provide testimony in a way in which the Parties are not required to be in the physical presence of one another (i.e., through appropriate technology);
7. Review and provide written responses to the draft and final investigation reports; and
8. Appeal a determination and/or sanction.

IX. Emergency Removals

The USM Office in consultation with the Title IX Coordinator may take interim measures such as changing a Respondent's work responsibilities or work location or placing the Respondent on paid leave during the resolution process. Such action may be appropriate when there is a legitimate concern that without such measures the Respondent will engage in prohibited conduct while the investigation is ongoing, or the Respondent will be unduly disruptive.

X. Consensual Relationships

The USM Office strongly discourages sexual relationships between a supervisor and subordinate employee, and any other relationship where a power differential exists between the parties. Because of the potential for conflicts of interest, employees involved in consensual sexual or romantic relationships with anyone over whom they have supervisory and/or evaluative responsibilities must inform the Title IX Coordinator of the relationship(s). Supervisory or evaluative responsibilities may be reassigned, as appropriate. While no relationships are expressly prohibited by this Policy, failure to self-report such relationships in a timely manner to the Title IX Coordinator may result in disciplinary action.

XI. Training and Education

A. Employees

The USM Office shall implement training and education every two years about this Policy and these Procedures, including the definitions of consent and prohibited conduct. Training shall also comply with Md. Code Ann., State Pers. & Pens. § 2-203.1.

B. Individuals involved in Investigations and Resolutions

1. All persons involved in any way in responding to, investigating, or adjudicating reports of prohibited conduct must have annual training on issues related to dating violence, domestic violence, sexual assault, and stalking; and how to investigate and conduct a hearing that protects the Parties and promotes accountability.

2. The USM Office will ensure that the Title IX Coordinator, Investigators, Hearing Officers, Appeal Officers, and any person who facilitates an informal resolution process, receive training on the following:
 - a) The definition of prohibited conduct;
 - b) The definition of consent;
 - c) The scope of the USM Office's education program or activity;
 - d) How to conduct an investigation and adjudication process including hearings, appeals, and informal resolution processes, as applicable;
 - e) How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and
 - f) Issues of relevance.
3. Hearing Officers will receive additional training on technology to be used at a live hearing and 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.
4. Training materials will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints under this Policy.
5. The USM Office will make its training materials publicly available on its website.

XII. Reporting Prohibited Conduct

- A. Individuals are encouraged to report prohibited conduct promptly to maximize the USM Office's ability to obtain evidence, identify potential Witnesses and conduct a thorough, prompt, and impartial investigation. While there are no time limits to reporting prohibited conduct, if too much time has passed since the incident occurred, the delay may result in loss of relevant evidence and/or an inability of the USM Office to remedy the situation.
- B. Any person may report prohibited conduct at any time by contacting the Title IX Coordinator, regardless of whether the reporting person is the Complainant.

Title IX Coordinator

George Samuel

Director of Human Resources/Title IX Coordinator

301.445.1969

gsamuel@usmd.edu

- C. If there is a complaint about the Title IX Coordinator, that complaint should be filed with:

Carolyn Skolnik

Associate Vice Chancellor for Policy and Human Resources

301.445.1921

cskolnik@usmd.edu

D. The Title IX Coordinator is responsible for:

1. Overseeing the USM Office's response to reports of prohibited conduct and complaints, and identifying and addressing any patterns or systemic problems revealed by such reports or complaints;
2. Investigating prohibited conduct;
3. Training employees;
4. Ensuring that appropriate policies and procedures are in place for responding to complaints of prohibited conduct;
5. Working with local law enforcement to ensure coordinated responses to Prohibited conduct cases; and
6. Coordinating the effective implementation of remedies, including supportive measures.

E. Reporting to the Police

In addition to the reporting set forth above, the USM Office strongly encourages any victim of a potential crime to report it to the appropriate law enforcement agency. Calling local law enforcement can help you:

1. Obtain emergency and nonemergency medical care;
2. Get immediate law enforcement response for your protection;
3. Understand how to provide assistance in a situation that may escalate to more severe criminal behavior;
4. Arrange a meeting with a victim advocate service;
5. Find counseling and support;
6. Initiate a criminal investigation and help to secure valuable evidence; and
7. Answer questions about the criminal process.

Upon request, the Title IX Coordinator will assist Complainants who wish to report prohibited conduct to law enforcement authorities.

F. Going to the Hospital

1. It is important to seek medical attention as soon as possible after a sexual assault. Sexual Assault Forensic Exams (SAFEs) are available at certain hospitals. MCASA has a list of such designated hospitals. See

<https://mcase.org/survivors/getting-medical-attention> and https://mcase.org/assets/files/Maryland_SAFE_Programs_List_updated_2023.08.pdf.

2. Upon request, the Title IX Coordinator will cooperate in helping a victim obtain appropriate medical attention.

G. Preserving Evidence

If possible, preserve physical evidence on the body and at the location of an assault. Preservation of evidence may be necessary to prove criminal conduct or obtain orders of protection. It is important not to shower or bathe, eat or drink, brush teeth or gargle, change clothes, urinate or defecate, brush or comb hair, or smoke. Clothing worn at the time of an assault should be placed in a paper bag “as is” and brought to the hospital. To avoid forgetting important details, write down facts about the accused and the assault.

XIII. Recordkeeping

The USM Office will keep records for seven (7) years of the following:

- A. Each investigation, including any determination regarding responsibility;
- B. Any audio or audiovisual recording or transcript;
- C. Any sanctions imposed on a Respondent;
- D. Any remedies provided to the Complainant designed to restore or preserve equal access to the education program or activity;
- E. Any appeal and the result thereof;
- F. Any informal resolution and the result therefrom;
- G. All materials used to train Title IX Coordinators, Investigators, Hearing Officers, and any person who facilitates an informal resolution process; and
- H. Any supportive measures taken in response to a report or formal complaint of prohibited conduct. In each instance, the USM Office 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 the USM Office 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 USM Office in the future.

XIV. External Reporting Options

The Title IX Coordinator shall ensure that each Complainant is informed of their right to file the complaint with the appropriate agencies. In the event a

Complainant files an external complaint, the Complainant is responsible for contacting that agency.

A. Criminal Reporting

The USM Office encourages persons to report crimes to appropriate law enforcement agencies. The USM Office will comply with its legal and policy obligations to report criminal sexual misconduct and child abuse and neglect. See USM BOR policy [VI-1.50 Policy on the Reporting of Suspected Child Abuse and Neglect](#).

B. External Agencies

1. **Equal Employment Opportunity Commission (EEOC)**

Baltimore Field Office GH Fallon Federal Building
31 Hopkins Plaza, Suite 1432
Baltimore, MD 21201
Phone: 1-800-669-4000 TTY: 1-800-669-6820
Website: <https://www.eeoc.gov>

2. **Maryland Commission on Civil Rights (MCCR)**

William Donald Schaefer Tower
6 Saint Paul Street, Suite 900
Baltimore, MD 21202-1631
Phone: 410-767-8600 Toll free: 1.800.637.6247
Website: <http://mccr.maryland.gov/>
E-mail: mccr@maryland.gov

3. **Office for Civil Rights (OCR) U.S. Department of Education**

a) **Philadelphia Office**

The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Phone: 215-656-8541
Website: http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html
E-mail: OCR.Philadelphia@ed.gov

b) **National Office**

Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue SW
Washington, DC 20202-1100
Phone: 800-421-3481
Website: <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>
Email: OCR@ed.gov

USM OFFICE SEXUAL MISCONDUCT RESOLUTION PROCEDURES

I. Confidentiality

A. Confidentiality of Complaints, Reports and Outcomes

The USM Office understands that the Complainant, Respondent, and Witnesses involved in any prohibited conduct may desire confidentiality. While the USM Office will keep these matters confidential to the extent possible and as required by law, it cannot ensure complete confidentiality, or even the confidentiality requested by Parties, in all cases. The USM Office will, to the best of its ability, keep confidential information provided by the Complainant, Respondent, or Witnesses, and will disclose this information only to individuals who need to know and/or are allowed to know by law. For example, the USM Office will need to disclose the basis of the allegations to the Respondent and allow the Parties similar and timely access to information to be used during the process. In addition, the USM Office may need to disclose information to law enforcement consistent with state and federal law; to other USM Office officials as necessary for coordinating Supportive Measures, for health, welfare, safety, and other appropriate reasons, as well as to government agencies who review the USM Office's compliance with federal and state law.

B. Reporter or Complainant Requests No Investigation/Adjudication

If a reporter or Complainant requests that an investigation not be conducted, or that a specific adjudication process or part thereof not take place, the USM Office will consider the reasons for the request, including concerns about safety of the person reportedly harmed and members of the USM Office community. This request must be submitted in writing to the USM Office's Title IX Coordinator. The USM Office must also balance considerations about the health and safety of the community against a reporter's or Complainant's desire not to have the report investigated. The USM Office will make the ultimate decision about whether to investigate or respond to the report in another manner, including taking informal actions, such as those described herein.

II. Anticipated Timelines

The USM Office strives to resolve all complaints within reasonably prompt time frames depending on the nature, extent, and complexity of the allegations. Good faith efforts will be made to resolve formal complaints in a timely manner, typically within 75 business days. The USM Office will communicate regularly with the Parties to update them on the progress and timing of the resolution processes, including any temporary delays and/or extensions for good cause. The Title IX Coordinator and/or designee(s) may grant good cause extensions and/or delays throughout the resolution processes, and the Parties will be notified in writing and given the reason(s) for the extensions and/or delays. Factors considered in granting or denying an extension may include considerations such as, but not limited to, the following: the absence of a Party, a

Party's Advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodations of disabilities.

III. Right to Advisor

A Party may be accompanied to any meeting held by the Title IX Coordinator or designee under these Procedures by an Advisor. Throughout the process, the Title IX Coordinator or designee will communicate and correspond directly with the Parties, not indirectly through the Advisor, except during questioning at a Hearing.

IV. Report Intake and Formal Complaint

A. Receipt of Report of Prohibited Conduct

Upon receipt of a report alleging prohibited conduct from a Complainant, the Title IX Coordinator will provide written acknowledgement of receipt of the report to the Complainant, if known, and a copy of this Policy and Procedures. The Complainant will be informed of available resources, supportive measures, the right to an Advisor and the Advisor's role; the right to file a report with law enforcement; and the prohibition against retaliation. If the report is received from a third party, meaning someone who is not the Complainant or the Respondent, the Title IX Coordinator will provide written acknowledgement of receipt of the report and take appropriate action as the information provided allows. Receipt of a report alleging prohibited conduct shall not constitute the filing of a formal complaint.

B. Intake and Initial Assessment of Report

The Title IX Coordinator will contact the Complainant to schedule an intake. Following the intake, the Title IX Coordinator will conduct an initial assessment to determine whether the reported conduct constitutes a potential violation of this Policy. If the Complainant opts not to participate in the intake, the Title IX Coordinator may be limited in its ability to assess the report. When the initial assessment determines that the alleged conduct does not constitute a potential violation under the Policy but may violate other USM Office policies, the report may be referred to another USM Office process, as appropriate.

C. Supportive Measures

1. The Title IX Coordinator is responsible for coordinating the effective implementation supportive measures. The Title IX Coordinator will maintain reasonable confidentiality of the supportive measures, provided that this does not impair the ability to provide the supportive measures.
2. If the USM Office does not provide a Complainant with supportive measures, then it must document why that was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the USM Office in the future. USM Office will promptly inform the Respondent (if they are a member of the USM Office community) of any supportive measures that will directly impact the

Respondent and provide an opportunity for the Respondent to respond. A Party may challenge the imposition of supportive measures or a decision not to impose supportive measures. The Title IX Coordinator and/or designee(s) retain discretion to impose and/or modify any supportive measures based on all available information. Supportive measures may remain in effect until the resolution of the formal complaint. Supportive measures may be extended, as needed, after the final resolution.

D. Filing of a Formal Complaint

A formal complaint is a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a Policy violation by a Respondent and requesting that the formal complaint proceed to the USM Office resolution processes. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. Should the Complainant decide to file a formal complaint, the Title IX Coordinator will review the formal complaint and determine whether it should be dismissed or move into a resolution process.

E. Complainant's Requests for Anonymity and to Not Proceed

1. A Complainant who wishes to remain anonymous and/or does not wish to file a formal complaint may make such a request to the Title IX Coordinator. The Title IX Coordinator will still offer supportive measures to the Complainant as appropriate. The Complainant retains the ability to file a formal complaint at any time. However, the Title IX Coordinator has ultimate discretion over whether the USM Office proceeds with an investigation, and the Title IX Coordinator may sign a formal complaint to initiate the resolution process when appropriate.
2. The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the ability to pursue an investigation and adjudication resolution process fairly and effectively. The USM Office's ability to remedy and respond to prohibited conduct may be limited if the Complainant does not want the USM Office to proceed with the resolution process.
3. When the Title IX Coordinator signs the formal complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of prohibited conduct. When the formal complaint proceeds, the Complainant may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation.

F. Notice of Designation or Dismissal of Formal Complaint

1. The Title IX Coordinator will proceed with a formal complaint of prohibited conduct only if:
 - a) The alleged conduct, if true, would constitute prohibited conduct within an education program or activity against a person in the United States; and

- b) The Complainant is participating or attempting to participate in an education program or activity at the time the formal complaint is filed.
- 2. Upon receipt of a formal complaint and after an initial assessment, the Title IX Coordinator will promptly send a written Notice of Designation or Dismissal simultaneously to both Parties, noting its decision to proceed with the resolution process or to dismiss the formal complaint. The Notice will also include the Parties' rights to appeal the decision.

3. Mandatory Dismissal

The Title IX Coordinator and/or designee(s) must dismiss a formal complaint or any allegations therein, if at any time during the resolution processes it is determined that:

- a) The conduct alleged in the formal complaint, if substantiated, would not constitute prohibited conduct; or
- b) The allegations in the formal complaint do not fall within the USM Office's jurisdiction.

4. Permissive Dismissal

The Title IX Coordinator and/or designee(s) may dismiss a formal complaint or any allegations therein if, at any time during the resolution processes:

- a) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
- b) The Respondent is no longer employed by the USM Office; or
- c) Specific circumstances prevent the USM Office from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

G. Appeal of Designation and/or Dismissal

Either Party may appeal the written Notice of Designation or Dismissal in accordance with the appeal procedures.

V. Resolution Processes

A. Consolidation of Complaints

At the discretion of the Title IX Coordinator, multiple reports may be consolidated into one if the information related to each incident is relevant in reaching a resolution. Matters may be consolidated where they involve multiple Complainants, multiple Respondents, or related facts and circumstances involving the same Parties.

B. Informal Resolution Process

Informal resolution can encompass a variety of approaches agreed to by the Parties including, but not limited to, mediation, Respondent acknowledgement of responsibility, and/or negotiated interventions and remedies facilitated by the Title IX Coordinator and/or designee(s). The Title IX Coordinator and/or designee(s) has the discretion to determine whether a formal complaint is appropriate for informal resolution. The Title IX Coordinator and/or designee(s) retains discretion to terminate an ongoing informal resolution process at any time and will inform both Parties simultaneously in writing of the reason(s) for terminating an informal resolution process.

1. Informal Resolution Permitted

- a) Either Party may request informal resolution. Where informal resolution is permitted, a formal complaint must be filed and approved by the Title IX Coordinator and/or designee(s). Informal resolution must be voluntary and not a requirement or condition of continued employment at the USM Office. In order to proceed with informal resolution, both Parties and the Title IX Coordinator and/or designee(s) must agree to the process in writing.
- b) In cases in which the Parties are considering informal resolution, the Title IX Coordinator or designee(s) will send a written Notice of Informal Resolution containing the following:
 - i. Summary of the allegations;
 - ii. Notice that neither Party is required to respond to the allegations and/or accept responsibility for the alleged prohibited conduct, unless a respondent chooses to do so;
 - iii. Notice that there is no finding of a Policy violation or sanction, unless agreed to by the Respondent;
 - iv. Notice that the Parties may opt out of informal resolution at any time prior to finalization of the informal resolution, at which point the formal complaint would proceed or resume to investigation or dismissal, as appropriate;
 - v. Notice of any potential consequences resulting from participating in the informal resolution process, including that records will be maintained or could be shared;
 - vi. Notice that if the informal resolution is finalized and implemented, it precludes the Parties from resuming investigation and adjudication of a formal complaint arising from the same allegations; and
 - vii. Notice that the results of informal resolution are not eligible for appeal.

2. Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged Policy violation(s) at any point during the resolution process. If the Respondent accepts responsibility, the Title IX Coordinator makes a determination that the individual is in violation of the Policy as to the admitted prohibited conduct. The Title IX Coordinator then determines appropriate interventions, remedies, and/or sanction(s). The process then concludes, and the Parties will be informed of this outcome. Appeals by either Party are not permitted in this instance. Any remaining allegations to which Respondent opts not to accept responsibility may proceed or continue to informal resolution, investigation and adjudication, and/or dismissal as appropriate and determined by the Title IX Coordinator and/or designee(s).

3. Completion of Informal Resolution

When an informal resolution agreement is reached and the terms of the agreement are implemented, the matter is resolved and closed. Appeals by either Party are not permitted. The Title IX Coordinator is responsible for ensuring compliance with the informal resolution. In cases where an agreement is not reached and the Title IX Coordinator determines that further action is necessary, or if either Party fails to comply with the terms of the informal resolution, the matter may be referred for an investigation and adjudication and/or dismissal under these Procedures, as appropriate. The Parties will be provided with a written copy of the terms of the informal resolution agreement. The Title IX Coordinator will maintain all records regarding informal resolution.

C. Investigation Process

When investigating a formal complaint, the below procedures will be utilized. However, at any time prior to reaching a determination regarding responsibility, an informal resolution may occur if appropriate conditions are satisfied.

1. Presumption of Not Responsible

Respondents are presumed not responsible for allegations until the USM Office provides the Parties with the written determination following any appeal if an appeal is filed, or if an appeal is not filed, on the date on which an appeal would no longer be considered timely.

2. Notice of Investigation

The Parties will be informed in writing of the Notice of Investigation, which will include the following:

- a) This Policy and Procedures;
- b) The allegations of prohibited conduct as defined by the Policy;

- c) Identities of the Parties involved, if known;
- d) Date(s) and location(s) of the alleged incident(s), if known;
- e) A timeframe of five (5) business days for the Respondent to submit an answer to the allegations to the Investigator;
- f) 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 adjudication process;
- g) That the Parties may have an Advisor of their choice, who may be an attorney;
- h) That if Parties do not select an Advisor of their choice, the USM Office will provide a trained Advisor for the hearing;
- i) Advisement that the USM Office prohibits knowingly making false statements or knowingly submitting false information during the investigation and adjudication;
- j) That the Parties will be provided with written notice of any additional allegations added after this initial Notice; and
- k) The range of potential sanctions associated with the alleged prohibited conduct.

3. Role of the Investigator

The Title IX Coordinator and/or designee(s) will designate an Investigator to conduct a prompt, thorough, fair, and impartial investigation.

4. Overview of the Investigation

a) Standard of Proof

The standard of proof for a determination of responsibility under this Policy is preponderance of the evidence, or more likely than not. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility remain with the USM Office and not on the Parties.

b) Evidence

- i. The investigation is an impartial fact-gathering process in which both Parties have an opportunity to be heard regarding the formal complaint. During the investigation, the Investigator will speak separately with both Parties and any other individuals who may have relevant information. The Parties will each have an equal opportunity to provide witnesses (including fact and expert witnesses, at their own expense) and any other relevant evidence.

- ii. Evidentiary materials, regardless of relevance, shall be made available for review; however, the Investigator will determine whether and how the evidence and witnesses submitted by the Parties are directly related to the allegations and whether and how that information will be factored into the investigation. The Investigator will also gather any available physical evidence or documents, including prior statements by the Parties or Witnesses, communications between the Parties, email messages, text messages, social media materials, and other records.
- iii. Parties are not restricted from discussing the allegations. However, Investigators may take such actions into account as it could impact Witnesses' ability to provide independent accounts and/or jeopardize the integrity of the information provided by Witnesses. Parties must not and should not disclose personally identifiable information publicly. The USM Office is not responsible for any external legal ramifications associated with a Party disclosing information related to the investigation.

c) Relevance

- i. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence 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.
- ii. The USM Office 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 it obtains that Party's voluntary, written consent to do so.
- iii. Investigators and the Hearing Officer may 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.

d) Draft Investigation Report

- i. At the conclusion of the investigation, the Investigator will draft an investigation report (the "Draft Report") that provides a case timeline, summarizes the information gathered (including, but not limited to, the names of witnesses and summaries of their statements), and all relevant evidence; including a section

identifying information that was gathered during the investigation but will not be included in the Report.

- ii. The Parties will be given an equal opportunity to review and respond to the Draft Report. Parties and their Advisors will have ten (10) business days to review the Draft Report and all evidence directly related to the formal complaint, including evidence upon which the USM Office does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence. Parties will have the opportunity to submit a written response, including comments, information, and/or questions to the Investigator. If there is any new or additional information, it must be presented to the Investigator at this time. If further investigation is warranted based on the Parties' written responses, the Investigator will continue the investigation and share any changes to the report with the parties, allowing ample time to respond. The Investigator will consider the Parties' written responses prior to completing the Final Investigation Report.

e) Final Investigation Report

Upon timely receipt of the Parties' written responses, or after the ten (10) day review period has lapsed with no written responses, the investigation ends. The Investigator will complete the Final Investigation Report, which contains summaries of all relevant information obtained throughout the course of the investigation and will be submitted to the Hearing Officer.

D. Adjudication Process

1. Review of Final Investigative Report

- a) The Title IX Coordinator or designee will provide each Party with a confidential copy of the Final Investigation Report, including all attachments and explain the next steps in the process.
- b) Each Party will be allowed ten (10) business days to submit a written response to the Final Investigative Report, which will be considered by the Hearing Officer. All written responses will be shared with the other Party prior to the hearing.
- c) To protect the confidentiality of all individuals involved, all materials shared with the Parties are considered confidential and should not be publicly disclosed or released.

2. Hearing Case File

The hearing case file includes the complete Final Investigation Report, all directly related evidence, and the Parties' written responses to the Final Investigation Report. The file will be shared with the Parties, their Advisors, and the Hearing Officer.

3. Hearing Procedures

- a) Written notice of the specific charges and a hearing date are provided to the Parties at least five (5) business days in advance of the Hearing. Hearing dates are scheduled in consultation with the Parties whenever possible.
- b) If a Party does not have an Advisor present at the hearing stage of the process, the USM Office will provide one free of charge for the purpose of conducting all questioning on behalf of that Party. Parties must notify the Title IX Coordinator at least two (2) business days prior to the hearing if an Advisor is needed from the USM Office.
- c) The USM Office will notify all Witnesses interviewed during the investigation of the date and time of the hearing.
- d) The Hearing Officer may also request the presence of additional witnesses. The Hearing Officer will conduct the hearing with all Parties and Witnesses virtually, with technology enabling participants simultaneously to see and hear each other.
- e) If needed, the USM Office will provide the Parties with the use of technology enabling the Hearing Officer and Parties to simultaneously see and hear the Party or Witness who is answering a question.
- f) All Hearings are closed to the public.
- g) Hearings will be recorded or transcribed by the USM Office. No other recordings will be permitted. Recordings and transcripts are maintained by the USM Office. Parties may submit a written request to inspect and review the recording or transcript.
- h) All evidence subject to the Parties' inspection and review will be available at the hearing to give each Party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
- i) The Hearing Officer may question the Investigator.
- j) Each Party's Advisor may question the Investigator.
- k) Each Party may provide a brief opening statement.
- l) The Hearing Officer may ask questions of the Parties.
- m) Each Party's Advisor will have an opportunity to question the other Party and any Witnesses. Questioning will be conducted directly, orally and in real time by the Party's Advisor only. Parties may not question each other or Witnesses directly.
- n) Before a Complainant, Respondent, or Witness answers a question, the Hearing Officer must first determine whether the question is

relevant and explain any decision to exclude a question as not relevant. All relevant questions and follow-up questions, including those challenging the credibility of Parties and Witnesses, will be allowed.

- o) Each Party will have the opportunity to make a brief closing statement.

4. Written Notice of Determination

The Hearing Officer will provide the Parties with a Written Notice of Determination at the same time. The Written Notice of Determination will include:

- a) The allegations at issue;
- b) A description of the procedural steps taken throughout the case;
- c) Findings of fact supporting the determination;
- d) Conclusions regarding application of the Policy to the facts;
- e) A statement of, and rationale for, the determination for each allegation;
- f) A statement of, and rationale for, any sanction(s) imposed on the Respondent and whether any remedies will be provided to the Complainant, as set forth in more detail below; and
- g) A description of the procedures and permissible grounds for appeal.

E. Disciplinary Sanctions, Remedies, and Other Responsive Actions

- a) The USM Office may take responsive action based on a determination of responsibility for a violation of the Policy. Responsive action is intended to eliminate prohibited conduct, prevent its recurrence, and promote accountability while supporting the USM Office's mission and legal obligations. The USM Office will not publicly disclose personally identifiable information about the Parties or the written determination (including any sanctions) except as required by law.
- b) The range of Sanctions and other responsive actions that may be imposed upon the Respondent include but are not limited to the following:
 - i. Education and training;
 - ii. Written reprimand;
 - iii. No contact directive;
 - iv. Denial of access to certain buildings;
 - v. Reassignment;
 - vi. Suspension without pay; or

- vii. Termination from employment.
- c) The following factors will be considered before imposing sanctions and other responsive action on a Respondent:
 - i. The nature and degree of violence involved in the conduct at issue;
 - ii. The impact of the conduct on the Complainant;
 - iii. The impact of the conduct on the USM Office;
 - iv. Prior relevant misconduct by the Respondent;
 - v. Maintenance of a safe and respectful environment conducive to working;
 - vi. Protection of the USM Office community; and
 - vii. Any other mitigating, aggravating or compelling circumstances appropriate to reaching a just and appropriate resolution.
 - d) The USM Office may provide reasonable remedies to a Complainant based on a determination of a Respondent's responsibility for a violation of the Policy. The range of remedies that may be provided to a Complainant include, but are not limited to, supportive measures such as reassignment to a different shift, location, supervisor, or work unit.
 - e) Remedies will be provided to the Complainant on a confidential basis. The written determination issued by the Hearing Officer will not include specific remedies provided to the Complainant but will state whether remedies designed to restore or preserve equal access to the education program or activity will be provided. The Respondent will not have access to specific information about what remedies will be provided except to the extent that the remedies are punitive and burden the Respondent. Remedies may not be appealed by either Party.

F. Appeals

1. Bases for Appeals

The Parties may initiate the appeal process when they receive a written Notice of Designation, Dismissal, or Determination. Appeals must be submitted in writing to the Title IX Coordinator within five (5) business days of receipt of the Notice. Appeals are limited to the bases listed below.

a) Procedural Irregularity

A procedural irregularity may include: a failure to follow the USM Office's Procedures; a failure to objectively evaluate all relevant evidence, including inculpatory or exculpatory evidence; or a determination regarding what evidence was excluded as irrelevant. The procedural irregularity must be material to the outcome of the

determination regarding responsibility or the decision to designate or dismiss.

b) New Evidence

New evidence is evidence that was not reasonably available at the time the written determination regarding responsibility or decision to designate/dismiss was made, that could affect the outcome. Evidence presented prior to the time the written determination or decision to designate/dismiss is issued does not qualify as new evidence that was not reasonably available.

c) Conflict of Interest

The Title IX Coordinator or designee, Investigator, or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the written determination or decision to designate/dismiss. Claims of conflict of interest or bias should be based on the current case and process in question and will be assessed accordingly.

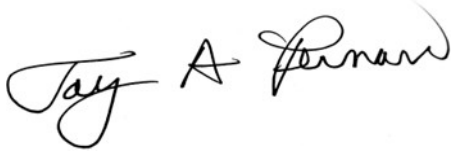
2. Appeal Officers

Appeals will be reviewed by an Appeal Officer. The Appeal Officer shall be free from conflicts of interest or bias and will have had no previous involvement with the case.

3. Appeal Process

- a) Appeals will be in writing only. There will be no hearing.
- b) Parties will have five (5) business days from issuance of a written Notice of Designation, Dismissal, or Determination to submit a written appeal statement.
- c) Parties will be notified if the other Party files an appeal and given notice in writing of the general grounds for the appeal. The other Party will be given five (5) business days from receipt of the other Party's written appeal statement to submit a statement in response.
- d) The Appeal Officer will issue a written decision, including a rationale, which shall be shared with both parties, within fifteen (15) business days of the submission of the written appeal.
- e) The Appeal Officer may affirm or reject the determination or decision. If the appeal is granted by the Appeal Officer, the case may be returned for further investigation or adjudication, as appropriate.
- f) The written decision by the Appeal Officer is final and is not subject to further appeal.

- g) After all review processes are concluded or when the time for filing an appeal has expired and neither Party has submitted an appeal, the Title IX Coordinator or designee shall notify the Parties simultaneously of the final outcome.
- h) The determination regarding responsibility for a violation of the Policy becomes final either on the date that the USM Office 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, on the date after which an appeal would no longer be considered timely.



10/23/2023

Jay A. Perman, Chancellor

Date