



BOARD OF REGENTS
SPECIAL BOARD MEETING
Via Zoom

July 31, 2024

AGENDA FOR PUBLIC SESSION

3:00 P.M.

Call to Order

Chair Gooden

1. **Revision to USM VI-160 University System of Maryland Policy on Sex Discrimination** (action)
Alison Wrynn, Senior Vice Chancellor for Academic and Student Affairs
2. **Reconvene to Closed Session** (action)

TOPIC: Revisions to VI-I.60 - University System of Maryland Policy on Sexual Harassment

COMMITTEE: Committee of the Whole

DATE OF COMMITTEE MEETING: Wednesday, July 31, 2024

SUMMARY: Attached are proposed amendments to the USM Policy on Sexual Harassment (VI-I.60) (to become Policy on Sex Discrimination), which incorporate the requirements of the new Title IX regulations that will go into effect on August 1, 2024.

Those regulations broaden the scope and applicability of Title IX regulations; enact new terminology and definitions; expand training and preventive education requirements; outline notification requirements based on an employee's status; offer protections for pregnancy and pregnancy-related conditions; and set forth grievance procedure changes.

These amendments were developed with guidance from the Office of the Attorney General and have been shared with and vetted by USM institutions' Title IX coordinators, general counsel, human resources officers, athletics department officials, vice presidents for student affairs, and presidents, and USM's shared governance leaders.

ALTERNATIVE(S): The regents may make recommendations and ask for additional information, but it is recommended that they approve these policy revisions so that USM will be in compliance with the Title IX regulations effective August 1, 2024.

FISCAL IMPACT: None

CHANCELLOR'S RECOMMENDATION: That the Board of Regents approve the proposed amendments to the USM Policy on Sexual Harassment (VI-I.60).

COMMITTEE ACTION:

DATE:

BOARD ACTION:

DATE:

SUBMITTED BY: Alison Wrynn

301-445-1992

awrynn@usmd.edu

VI-1.60 - UNIVERSITY SYSTEM OF MARYLAND POLICY ON SEX DISCRIMINATION
(Approved by the Board of Regents, June 27, 2014; Amended June 19, 2015; Amended June 21, 2019; Amended July 22, 2020, Amended July 22, 2024²).

PURPOSE AND APPLICABILITY

The University System of Maryland (USM) is committed to providing a working and learning environment free from Sex Discrimination³ 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 Sex Discrimination, 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 are subject to this Policy. This Policy applies to all conduct occurring within an institution's Education Program or Activity.

This Policy addresses the obligations of USM institutions and the USM Office (together, the Institutions) to address Sex Discrimination prohibited by Title IX of the Education Amendments of 1972 (Title IX) and Sex Discrimination prohibited by other federal laws and Maryland law. Federal regulations implementing Title IX require that institutions implement certain procedures when they obtain information about conduct that may reasonably constitute Sex Discrimination. For conduct covered by this Policy but not prohibited under Title IX, Institutions may choose to provide alternative policies and procedures for the adjudication of complaints.

POLICY

I. Definitions

For purposes of this Policy, the following definitions apply:


A. Complainant is an individual who is alleged to have been subjected to Sex Discrimination who is a student or employee or who was participating or attempting to participate in the Education Program or Activity at the time of the alleged Sex Discrimination, whether or not that individual initiated the Complaint.⁴

B. Complaint means an oral or written request to the Institution that objectively can be understood as a request to investigate and make a determination about alleged Sex Discrimination.

² This amendment is effective August 1, 2024.

³ Capitalized terms are defined in this Policy.

⁴ A parent, guardian, or other authorized legal representative with the legal right to act on behalf of the Complainant may also file a Complaint on behalf of a Complainant.

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Deleted: 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

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C. Confidential Employees are (1) employees whose communications are privileged⁵ or confidential under Federal or State law; (2) employees whose communications are specifically designated as confidential for the purpose of providing services related to potential Sex Discrimination; or (3) employees who are conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination—but the employee’s confidential status is only with respect to information received while conducting the study.⁶

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D. Education Program or Activity of an Institution includes all operations of the Institution in the United States, including, but not limited to, all conduct⁷ over which an Institution exercises disciplinary authority and all conduct that occurs in any building owned or controlled by a student organization that is officially recognized by an Institution. An Institution must address a sex-based hostile environment under its Education Program or Activity even when some conduct alleged to be contributing to the hostile environment occurred outside the Institution’s Education Program or Activity or outside the United States.

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E. Employees with Authority are employees, other than Confidential Employees, who have authority to institute corrective measures or who are responsible for administrative leadership, teaching, or advising.

F. 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.

G. 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

⁵ The employee’s confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies.

⁶ Each Institution’s Notice of Nondiscrimination (as defined in Section II.D) and policy shall conspicuously publish the names of all Confidential Employees, except employees whose confidential status is only with respect to their conducting an institutional review board-approved human-subjects research study designed to gather information about Sex Discrimination.

⁷ Such conduct may occur in-person or through the use of technology such as e-mail, texts, social media applications, etc.

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.

H. Parental Status means the current, potential, or past status of an individual who is, with respect to any person under the age of 18 or over the age of 18 but incapable of self-care because of a disability: (1) a biological, step, adoptive, or foster parent; (2) a legal custodian or guardian; (3) in loco parentis; or (4) actively seeking legal custody, guardianship, visitation, or adoption.

I. Pregnancy or Related Conditions means the current, past, or potential presence of any of the following conditions:

1. Pregnancy, childbirth, termination of pregnancy, or lactation
2. Recovery from pregnancy, childbirth, termination of pregnancy, or lactation
3. Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation.

J. Relevant means related to the allegations of sex discrimination under investigation as part of the grievance procedures. Questions are Relevant when they seek evidence which may aid a decisionmaker in determining whether the alleged sex discrimination occurred. Evidence is Relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

K. Remedies are measures provided, as appropriate, to a Complainant or any other person the Institution identifies as having had their equal access to the Institution's Education Program or Activity limited or denied by Sex Discrimination. These measures are provided to restore or preserve that person's access to the Institution's Education Program or Activity after the Institution determines that Sex Discrimination occurred.

L. Respondent means an individual alleged to be the perpetrator of conduct that could constitute Sex Discrimination.

M. 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 reported information, made a Complaint, testified, assisted, participated or refused to participate in any manner in an investigation, proceeding, or hearing related to Sex Discrimination. Retaliation includes bringing charges against an individual for violations of other institutional policies that do not involve Sex Discrimination but arise out of the same facts or circumstances as a Complaint, for the purpose of interfering with any right or privilege secured by Title IX.

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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. ¶
"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. ¶
Respondent means an individual who has been reported

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N. **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 sexual acts directed against another person, and include:

1. **Non-Consensual Sexual Penetration**— Penetration, no matter how slight, of the genital or anal opening of the body of another person with any body part or object, or oral penetration by a sex organ of 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.
2. **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.
3. **Incest**—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
4. **Statutory Rape**—Nonforcible sexual intercourse with a person who is under the statutory age of consent.⁸

O. **Sex-Based Harassment** means Sex Discrimination prohibited by Title IX that satisfies one or more of the following:

1. **Quid pro quo harassment**— An employee, agent, or other person authorized by the Institution to provide an aid, benefit, or service under the Institution's Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.
2. **Hostile Environment Harassment**— Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the Institution's Education Program or Activity, (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
 - a. The degree to which the conduct affected the Complainant's ability to access the Institution's Education Program or Activity;
 - b. The type, frequency, and duration of the conduct;
 - c. The parties' ages, roles within the Institution's Education Program or Activity, previous interactions, and other factors about each party that may be Relevant to evaluating the effects of the conduct;
 - d. The location of the conduct and the context in which the conduct occurred; and

⁸ See Md. Code Ann., Crim. Law §§ 3-301 through 3-307.

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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. ¶

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e. Other sex-based harassment in the Institution's Education Program or Activity.

3. Sexual Assault, Dating Violence, Domestic Violence, or Stalking.

P. Sex-Based Harassment prohibited by Md. Code Ann., State Gov't § 20-601⁹ means unwelcome and offensive conduct, which need not be severe or pervasive, when the conduct is based on sex, sexual orientation, or gender identity or consists of unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature; and

1. Submission to the conduct is made either explicitly or implicitly a term or condition of the employment of an individual;
2. Submission to or rejection of the conduct is used as a basis for employment decisions affecting the individual; or
3. Based on the totality of the circumstances, the conduct creates a working environment that a reasonable person would perceive to be abusive or hostile.

Q. Sex Discrimination means exclusion from participation in or being denied the benefits of any Education Program or Activity of an Institution on the basis of sex, including sex stereotypes, sex characteristics, sexual orientation, gender identity, and Pregnancy or Related Conditions. Sex-Based Harassment is a form of Sex Discrimination.

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

S. Student means a person who has gained admission to an Institution.

T. Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:

1. Restore or preserve that party's access to the Institution's Education Program or Activity, including measures that are designed to protect the safety of the parties or the Institution's educational environment; or,
2. Provide support during the Institution's grievance procedures.

Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact applied to one or more parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus,

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⁹This definition applies only to sex-based harassment of employees that does not constitute Sex-Based Harassment prohibited by Title IX. See Md. Code Ann., State Gov't §§ 20-601 through 20-611.

training and education programs related to Sex-Based Harassment, and other similar measures.

II. Institutional Administration of Title IX Policies and Procedures

A. Oversight of Title IX Compliance

Title IX Coordinator Each 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.”

1. Title IX Team

Depending on the size and specific needs of the Institution, it 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 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, delegating, and supervising the activities of the Title IX Team.

B. Training

All employees shall be trained upon hire, upon change of position that alters their duties under Title IX or this Policy, and annually thereafter. Training materials must not rely on sex stereotypes.

1. All Employees

Each Institution must develop and implement training for all employees regarding the Institution’s obligation to address Sex Discrimination. The training must include, at a minimum, the scope of conduct that may constitute Sex Discrimination, the definition of Sex-Based Harassment, and all applicable notification and information requirements that apply to each employee’s specific designation (all employees, Confidential Employees, and Employees with Authority).

Training for employees shall also comply with Md. Code Ann., State Pers. & Pens. § 2-203.1.

2. Investigators, decision-makers, and individuals who are responsible for implementing grievance procedures or have the authority to modify or terminate Supportive Measures.

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A. Response ¶

An institution with Actual Knowledge

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B.

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C. Notice of Nondiscrimination ¶

Investigators, decision-makers, and individuals who are responsible for implementing grievance procedures or have the authority to modify or terminate Supportive Measures must receive training on the topics required for all employees (above), as well as training on the following (to the extent of their responsibilities):

- a. The Institution’s responsibilities, including the scope of the Institution’s Education Program or Activity and the Institution’s obligations to address Sex Discrimination (see 34 C.F.R. § 106.44);
- b. The Institution’s grievance procedures (including how to conduct an investigation);
- c. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- d. The meaning and application of the term “Relevant” in relation to questions and evidence, and the types of evidence that are impermissible (Impermissible Evidence, defined in Section III.P) regardless of relevance; and
- e. Issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking and conducting an investigation and hearing process that protects the safety of individuals and promotes accountability.

3. Facilitators of an informal resolution process

In addition to receiving the training required for all employees (above), facilitators of informal resolution processes must be trained on the rules and practices associated with the Institution’s informal resolution processes, and on how to serve impartially, including by avoiding conflicts of interest and bias.

4. Title IX Coordinator and designees

In addition to all of the training requirements for all of the categories above, the Title IX Coordinator and any designees must be trained on their specific responsibilities, the specific actions required to prevent discrimination and ensure equal access (see 34 C.F.R. §§ 106.40(b)(3), 106.44(f) and (g)), the Institution’s recordkeeping system and recordkeeping requirements, and any other training necessary to coordinate compliance with Title IX.

5. Preventive Education¹⁰

Each Institution must develop and implement preventive education for all employees and students, to help identify and reduce the occurrence of Sex Discrimination. At a minimum, these educational initiatives must contain information regarding what constitutes Sex-Based Harassment, definitions of

¹⁰ See 34 C.F.R. § 668.46.

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Content**

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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; ¶

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A statement that inquiries concerning the

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The name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator(s). ¶

consent and prohibited conduct, the Institution's procedures, bystander intervention, risk reduction, and the consequences of engaging in Sex-Based Harassment. These educational initiatives shall be for all incoming students and 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 also comply with Md. Code Ann., State Pers. & Pens. § 2-203.1.

C. **Policies.** Each Institution shall adopt and publish a policy¹¹ that:

1. Includes a statement prohibiting Sex Discrimination in its Education Program or Activity;
2. Prohibits any policy, practice, or procedure, or any employment action, concerning the current, potential, or past Parental Status, family status, or marital status of a student, employee, or applicant (for admission or employment), that treats persons differently on the basis of sex.
3. Includes a statement prohibiting Retaliation;
4. Adopts the definitions in this Policy for Sex Discrimination and defines Relevant terms not defined in this Policy, such as consent;
5. Informs victims of a Sexual Assault of the right to file criminal charges with the appropriate law enforcement officials;
6. 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;
7. Designates the nearest hospitals equipped with the Maryland Department of State Police Sexual Assault Evidence Collection Kit;
8. Informs victims of the importance of preserving evidence as may be necessary to prove criminal conduct or obtain orders of protection;
9. Provides for full and prompt cooperation from Institution personnel in obtaining appropriate medical attention, including transporting a victim to the nearest designated hospital;

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Dissemination of Notice

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Informs victims of a Sexual Assault of the right to file criminal charges with the appropriate law enforcement officials; ¶

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¹¹ These policy provisions are required by Title IX, except where another law is cited.

10. 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;

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11. 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;

12. 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 Sex-Based Harassment to the Institution or law enforcement or participates in a Sex-Based Harassment matter as a witness, if the Institution determines that:

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a. The violation occurred during or near the time of the alleged Sex-Based Harassment;

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b. The student made the report of Sex-Based Harassment, or is participating in an investigation as a witness, in good faith; and

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c. The violation was not an act that was reasonably likely to place the health or safety of another individual at risk.

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13. Provides for reasonable modifications of the Institution's policies, practices, or procedures for students experiencing Pregnancy or Related Conditions.

a. Each reasonable modification shall be based on the student's individualized needs, in consultation with the student.

b. A modification that would fundamentally alter the nature of the Institution's Education Program or Activity is not reasonable.

c. The Institution must allow the student to voluntarily access any separate and comparable portion of the Education Program or Activity.

d. The Institution must allow the student to take a voluntary leave of absence for a period of time determined by the student's medical provider, or the period of time permitted by the Institution's policy, whichever is greater. Upon return from a leave of absence, the student must be reinstated to the same academic status and (to the extent possible) extracurricular status that the student held when the leave began.

e. The Institution may not require documentation for reasonable modifications unless it is necessary for the institution to determine what reasonable modifications are needed or whether to take additional actions.

14. Provides for reasonable accommodations for employees with known limitations related to Pregnancy or Related Conditions.¹²
 - a. Each reasonable accommodation shall be based on the employee's individualized needs, in consultation with the employee, and in consideration of any medical documentation.
 - b. The Institution may request from the employee only the minimum documentation necessary to establish that the employee is experiencing Pregnancy or Related Conditions, and what adjustments are needed.
 - c. Reasonable accommodations may include temporary relief from essential functions of the employee's job, and in the case of an employee with insufficient accrued leave or no paid leave, voluntary leave of absence without pay.
 - d. At the conclusion of any accommodation, the employee shall be reinstated to the same status as before the accommodation without decrease in compensation or loss of promotional opportunities or any other right or privilege of employment.
15. Provides for treating Pregnancy or Related Conditions in the same manner and under the same policies as any other temporary medical conditions for all job-related purposes, including commencement, duration, and extension of leave, payment of disability income, accrual of seniority and any other benefit or service, reinstatement, and any other fringe benefit offered to employees by virtue of employment.
16. Provides for treating Pregnancy or Related Conditions in the same manner and under the same policies as any other temporary medical conditions with respect to medical or hospital benefits, services, or any other policies the Institution operates or participates in with respect to students in the Institution's Education Program or Activity.
17. Provides for a lactation space for all students, employees, and visitors, which may not be a bathroom, that is clean, shielded from view, free of intrusion from others, and may be used for expressing milk or breastfeeding as needed.

¹² The Pregnant Workers Fairness Act requires accommodations for employees experiencing Pregnancy or Related Conditions. See 42 U.S.C. 2000gg(3); 29 C.F.R. § 1636. Allegations regarding failure to provide accommodations to employees with known limitations related to Pregnancy or Related Conditions are not covered by Title IX. Institutions may, but are not required to, address such allegations under procedures required for allegations of conduct prohibited by Title IX.

18. Prohibits requiring a student who is Pregnant or with a Related Condition to provide certification that the student is physically able to participate in a class, program, or activity, unless:
 - a. The certified level of physical ability or health is necessary for the class, program, or activity;
 - b. The recipient requires such certifications of all students participating in the class, program, or activity; and
 - c. The information obtained through the certification is not used as a basis for prohibited discrimination.
19. In circumstances where different treatment or separation on the basis of sex is permitted, prohibits different treatment or separation on the basis of sex in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as permitted by 20 U.S.C. §§ 1681 and 1686 and their corresponding regulations.¹³
20. Provides information on how individuals participating in the Institution's Education Program or Activity can contact the Institution's Confidential Employees (excluding those whose confidential status is only with respect to information received while conducting a research study).

D. Notice of Nondiscrimination. Each Institution must publish a Notice of Nondiscrimination in the following manner:

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 its Education Program or Activity, 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 Office for Civil Rights of the U.S. Department of Education, or both; and
- c. The name or title, office address, email address, and telephone number of the employee or employees designated as the Title IX Coordinator(s).
- d. How to locate the Institution's Title IX Policy and grievance procedures.

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¹³ For purposes of this provision, adopting a policy or engaging in a practice that prevents an individual from participating in an Education Program or Activity consistent with their gender identity subjects them to more than de minimis harm.

- e. [How to report information about conduct that may constitute Sex Discrimination.](#)
- f. [How to make a Complaint about Sex Discrimination.](#)

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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 in publications of general distribution that provide information to students and employees about the Institution’s services and policies, including each handbook, catalog, announcement, bulletin, and application that it makes available to persons entitled to a notification. If necessary because of limitations in the format or size of any publication, Institutions may substitute a shortened statement that the Institution prohibits discrimination on the basis of sex and that individuals may report concerns or questions to the Title IX Coordinator and provide the location of the full notice on the Institution’s website. Institutions may not distribute or publish any statement that they treat applicants, students, or employees differently on the basis of sex, except as permitted by Title IX.

III. Institutional Response to Information About Sex Discrimination

An Institution with knowledge of conduct that may reasonably constitute Sex Discrimination or Retaliation in its Education Program or Activity must respond promptly and effectively. Each Institution shall adopt and publish grievance procedures. If an Institution adopts grievance procedures that apply to some, but not all, Complaints, the procedures must articulate consistent principles for how the Institution will determine which procedures apply. All procedures to address Sex Discrimination or Retaliation prohibited by Title IX must include the following provisions:¹⁴

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1. Require that, when an institution has Actual Knowledge of Sexual Harassment, the

¹⁴ Institutions may, but are not required to, use the same grievance procedures to address Sex Discrimination or Retaliation against employees not prohibited by Title IX but prohibited by Maryland law or other federal laws.

A. Monitoring. The Title IX Coordinator must:

1. Monitor the Education Program or Activity for barriers to reporting information about conduct that reasonably may constitute Sex Discrimination; and
2. Take steps reasonably calculated to address such barriers.

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B. Notification Requirements. All Institution employees must notify the Title IX Coordinator or provide Students or other persons with the contact information of the Title IX Coordinator under the following circumstances:

1. **Pregnancy or Related Conditions** – If a Student, or a person who has the legal right to act on behalf of the Student, informs any employee of the Student’s Pregnancy or Related Conditions, the employee must provide that person with the Title IX Coordinator’s contact information and inform them that the Title IX Coordinator can coordinate specific actions to ensure equal access and prevention of discrimination. Employees need not provide the Title IX Coordinator’s contact information if the employee reasonably believes that the Title IX Coordinator has been notified.
2. **Sex Discrimination** – When an employee becomes aware of information about conduct that reasonably may constitute Sex Discrimination or Retaliation, they are required to take the following action based on their designation:
 - a. **Confidential Employees** must inform any person who communicates information about conduct that may reasonably constitute Sex Discrimination that they are Confidential Employees, circumstances in which they are not required to notify the Title IX Coordinator about conduct that reasonably may constitute Sex Discrimination, how to contact the Title IX Coordinator and how to initiate a Complaint, and that the Title IX Coordinator may be able to offer and coordinate Supportive Measures as well as initiate an informal resolution process or investigation under the grievance procedures.
 - b. **Employees with Authority** must notify the Title IX Coordinator when they obtain information about conduct that may reasonably constitute Sex Discrimination.
 - c. **All Employees** who are not Confidential Employees or Employees with Authority shall either (1) notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute Sex Discrimination or (2) provide the contact information of the Title IX Coordinator and information about how to make a Complaint to any person who provides the employee with information about conduct that may reasonably constitute Sex Discrimination.

C. Response to Notification. Upon receiving from an employee notification of conduct that may reasonably constitute Sex Discrimination or Retaliation, the Title IX Coordinator must:

1. Treat the Complainant and Respondent equitably;
2. Offer to coordinate Supportive Measures, as appropriate;
3. Notify the Complainant (or if the Complainant is unknown, the person who reported the information) of the Institution's grievance procedures.

D. Emergency Removal. An Institution may remove a Respondent from the Institution's Education Program or Activity on an emergency basis, provided that the Institution:

1. Undertakes an individualized safety and risk analysis;
2. Determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of Sex Discrimination justifies removal; and
3. Provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

E. Initiation of Complaint. Upon notification by a Complainant or an employee¹⁵ of information about conduct that reasonably may constitute Sex Discrimination or Retaliation, the Title IX Coordinator must:

1. Initiate grievance procedures in response to a Complaint; or
2. In the absence of a Complaint or the withdrawal of any of the allegations in a Complaint, determine whether to initiate a Complaint of Sex Discrimination or Retaliation in consideration of, at a minimum, the following factors:
 - a. Whether the Complainant has requested not to proceed with the Complaint;
 - b. The Complainant's reasonable safety concerns regarding initiating a Complaint;
 - c. The risk that additional acts of Sex Discrimination or Retaliation would occur if a Complaint is not initiated;
 - d. The severity of the alleged Sex Discrimination or Retaliation, including whether the discrimination, if established, would require the removal of the Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent recurrence;
 - e. The age and relationship of the parties, including whether the Respondent is an employee;
 - f. The scope of the alleged Sex Discrimination or Retaliation, including information suggesting a pattern, ongoing Sex Discrimination or

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¹⁵ A Complaint of Sex Discrimination other than Sex-Based Harassment may also be initiated by (1) any student or employee; and (2) any person other than a student or employee who was participating in or attempting to participate in the Institution's Education Program or Activity at the time of the alleged Sex Discrimination.

Retaliation, or Sex Discrimination or Retaliation alleged to have impacted multiple individuals;

- g. The availability of evidence to assist a decision-maker in determining whether sex discrimination occurred; and
- h. Whether the Institution could end the alleged Sex Discrimination or Retaliation and prevent its recurrence without initiating grievance procedures.

- 3. If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct, as alleged, prevents the Institution from ensuring equal access on the basis of sex to its Education Program or Activity, the Title IX Coordinator may initiate a Complaint. If the Title IX Coordinator initiates a Complaint, the Title IX Coordinator must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing Supportive Measures.
- 4. The Title IX Coordinator need not initiate a Complaint or consider the factors in paragraph 2 if the Title IX Coordinator reasonably determines that the conduct as alleged could not constitute Sex Discrimination or Retaliation.

F. Supportive Measures. The Institution must offer and coordinate Supportive Measures.

The Institution's policy must describe the range of Supportive Measures available to Complainants and Respondents. The Institution must provide the parties with a timely opportunity to seek, from an appropriate and impartial decision-maker, modification, or reversal of the decision to provide, deny, modify, or terminate Supportive Measures applicable to them. The impartial decision-maker must be someone other than the employee who made the challenged decision and must have authority to modify or reverse the decision, if the impartial decision-maker determines that the initial decision to provide, deny, modify, or terminate the Supportive Measures was inconsistent with the definition of Supportive Measures. The Institution must also provide a party with the opportunity to seek additional modification or termination of a Supportive Measure applicable to them if circumstances change materially. The Institution must not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of Supportive Measures provided to another party, unless necessary to provide the Supportive Measure, restore or preserve the party's access to the Education Program or Activity, or when an exception applies.

G. How to Report Sex Discrimination or Retaliation.

- 1. Any person may report Sex Discrimination or Retaliation (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute Sex Discrimination or Retaliation) in person, by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator, or by

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Supportive Measures. Describe the range of Supportive Measures available to Complainants and Respondents. ¶

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any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

- 2. Such a report may be made at any time (including during nonbusiness hours) by using the telephone number or email address, or by mail to the office address listed for the Title IX Coordinator.

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H. Equitable Treatment. Complainants and Respondents will be treated equitably by:

- 1. Providing remedies to a Complainant where a determination of responsibility for Sex Discrimination or Retaliation has been made against the Respondent, and by using procedures that comply with Title IX when investigating and adjudicating allegations of Sex Discrimination or Retaliation 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);
- 2. Providing an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence; and
- 3. Applying any provisions, rules, or practices used to investigate and adjudicate complaints under Title IX equally to both parties.

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I. Objective Evaluation of Evidence. Institutions' procedures must 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.

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J. No Conflict or Bias. Institutions' procedures must 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.

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K. Presumption of Non-Responsibility. Institutions' procedures must 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.

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L. Reasonably Prompt Time Frames. Institutions' procedures must 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.

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M. Privacy. Institutions' procedures must require that reasonable steps be taken to protect the privacy of the parties and witnesses during the process, provided that steps do not restrict the ability of the parties to obtain and present evidence, consult with others, or otherwise prepare for or participate in the process.

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N. Sanctions and Remedies. Institutions' procedures must 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.

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O. Standard of Evidence. Institutions' procedures must specify "by a preponderance of the evidence" as the standard of evidence for all Complaints of Sex Discrimination.

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Restrictions on Consideration of Certain

P. Impermissible Evidence. An Institution may not elicit, consider, require, rely upon, allow, disclose, or otherwise use any of the following as evidence (Impermissible Evidence), regardless of whether it is Relevant:

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1. Information protected under a legally recognized privilege or evidence provided to a Confidential Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

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2. Records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the treatment of a party or witness, unless the Institution obtains that party's or witness's voluntary, written consent to do so.

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3. A Student's history of mental health counseling, treatment, or diagnosis, unless the Student consents.

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4. Evidence relating to a Complainant's sexual interests or prior sexual conduct, except the following is permitted:

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Dismissal of

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Consolidation of

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Investigation of

Moved down [11]: Provide an equal opportunity for the parties to present witnesses, including fact and

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Live Hearing

a. Evidence about the Complainant's prior sexual conduct that is offered to prove that someone other than the Respondent committed the alleged conduct; or

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b. Evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to alleged Sex-Based Harassment. The fact of prior consensual sexual conduct between Complainant and Respondent does not by itself demonstrate or imply that the Complainant's consent occurred in the events alleged.

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5. Evidence relating to a Respondent's prior sexual history with an individual other than a party to the proceedings, except to prove prior sexual misconduct; support a claim that the Respondent has an ulterior motive; or impeach the Respondent's credibility after that student has put their prior sexual conduct at issue.

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Q. Notice. Upon initiation of a Complaint, the Institution must provide written notice to known parties of the following:

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1. The investigation and adjudication process, including any informal process available;
2. The allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. "Sufficient details" include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Sex Discrimination, and the dates and locations of the alleged incidents, if known;
3. That retaliation is prohibited;
4. That the parties are entitled to an equal opportunity to access the Relevant and not otherwise Impermissible Evidence or an accurate description of evidence..

R. Dismissal of Complaints.

1. An Institution may dismiss a Complaint for any of the following reasons:
 - a. The Institution is unable to identify the Respondent after taking reasonable steps to do so;
 - b. The Respondent is not participating in the Education Program or Activity or is not employed by the Institution;
 - c. The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint on behalf of the Institution, and the Institution determines that without the Complainant's withdrawn allegations any conduct that remains would not constitute Sex Discrimination, if proven;
 - d. The Institution determines that the conduct alleged, if proven, would not constitute Sex Discrimination, after taking reasonable steps to clarify the allegations with the Complainant.
2. Upon dismissal, an Institution must promptly notify the Complainant of the basis of the dismissal and the opportunity to appeal.
3. Upon dismissal, if the dismissal occurs after the Respondent has been notified of the allegations, an Institution must promptly notify the Respondent of the basis of the dismissal and the opportunity to appeal.
4. The following are permitted bases for appeal:
 - a. Procedural irregularity that would change the outcome;
 - b. New evidence that would change the outcome that was not reasonably available when the determination was made;
 - c. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that would change the outcome;
 - d. The Institution may offer additional bases for appeal as long as they are available equally to all parties.

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Determination Regarding Responsibility.

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 Identification of the allegations potentially constituting ¶
 Sexual Harassment; ¶
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Deleted: 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;

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5. If a dismissal is appealed, the Institution must:
 - a. Notify the parties, including providing notice of the allegations to the Respondent if not previously notified;
 - b. Implement appeal procedures equally for the parties;
 - c. Ensure that the appeal decision-maker has received training and did not participate in the investigation or dismissal;
 - d. Provide the parties a reasonable, and equal opportunity to make a statement in support of or challenging the outcome; and
 - e. Notify the parties of the result of the appeal and the basis for the result.
6. Upon dismissal, the Title IX Coordinator must offer Supportive Measures to the Complainant or Respondent, as appropriate.
7. Upon dismissal, the Title IX Coordinator must take appropriate and prompt steps to ensure that Sex Discrimination does not continue or recur.

S. Consolidation of Complaints. An Institution may consolidate Complaints of Sex Discrimination 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 Sex Discrimination arise out of the same facts or circumstances.

T. Investigation of Complaint. When investigating a Complaint and throughout the investigation and adjudication process, the Institution must:

1. Ensure that the burden is on the Institution—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether Sex Discrimination or Retaliation occurred;
2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
3. Review all evidence gathered through the investigation and determine what evidence is Relevant and what is Impermissible Evidence regardless of relevance; and
4. Provide each party with an equal opportunity to access the evidence that is Relevant to the allegations of Sex Discrimination and not otherwise impermissible, in the following manner:
 - a. The Institution must provide an equal opportunity to access either the Relevant and not Impermissible Evidence or a description of this evidence. If the Institution provides a description, it must further provide the parties with an equal opportunity to access the Relevant and not otherwise Impermissible Evidence upon request of any party;
 - b. The Institution must provide a reasonable opportunity to respond to the evidence or to the accurate description of the evidence;
 - c. The Institution must take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedure. Disclosure of evidence or

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Give both

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¶ **Final Decision.** The determination regarding responsibility becomes final either on the date

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information for purposes of administrative or litigation proceedings related to the Complaint is authorized.

U. Questioning of Parties and Witnesses. An institution must provide a process that enables the decision-maker to question parties and witnesses and adequately assess a party's or witness's credibility to the extent credibility is in dispute and Relevant to evaluating one or more allegations of Sex Discrimination.

V. Determination Regarding Responsibility. Following an investigation, the Institution must:

1. Use the preponderance of the evidence standard of proof to determine whether Sex Discrimination or Retaliation occurred.
2. Notify the parties in writing of the determination of whether Sex Discrimination occurred, including the rationale for the determination, and the procedures and permissible bases for the Complainant and Respondent to appeal.
3. If there is a determination that Sex Discrimination or Retaliation has occurred, as appropriate, require the Title IX Coordinator to coordinate the implementation of remedies, coordinate the imposition of any disciplinary sanctions, including notification to the Complainant of any disciplinary sanctions imposed upon the Respondent, and take other prompt and appropriate steps to ensure that the Sex Discrimination or Retaliation does not continue or recur.
4. An Institution may not impose discipline on a Respondent for Sex Discrimination or Retaliation unless there is a determination at the conclusion of the Institution's grievance procedures that the Respondent engaged in Sex Discrimination or Retaliation.
5. An Institution may not discipline a party, witness, or others participating in the process for making a false statement or engaging in consensual sexual conduct based solely on the Institution's determination whether or not Sex Discrimination occurred.

W. Appeals. An Institution must offer the parties an appeal process that, at a minimum, is the same as is offered in comparable proceedings at the Institution such as for other complaints of discrimination.

X. Additional Requirements for Student Complaints of Sex-Based Harassment.¹⁶ For Complaints alleging Sex-Based Harassment involving Student Complainants or Respondents, Institutions must provide for the following procedures in addition to the above:

1. **Student Employees.** When a Complainant or Respondent in a matter alleging Sex-Based Harassment is both a student and an employee, the Institution should

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¹⁶ See 34 C.F.R. § 106.46.

make a fact-specific determination as to whether the requirements of this section apply in the individual circumstances. The Institution should specifically consider, at a minimum, whether the parties' primary relationship is employment or education and whether the alleged conduct occurred while the student-employee was performing employment-related work.

- 2. Additional Written Notice.** Upon initiation of an investigation for student Complaints of Sex-Based Harassment, the Institution must provide written notice to all parties whose identity is known with sufficient time for all parties to prepare for any initial interview. The notice must contain:

 - a. All notices required in Sections III.A-W of this Policy;
 - b. A statement that the Respondent is presumed not responsible until a determination is made;
 - c. A statement that the parties will have an opportunity to present Relevant and not otherwise Impermissible Evidence to a trained, impartial decision-maker;
 - d. A statement that an advisor is permitted and that the advisor may be, but is not required to be, an attorney;
 - e. A statement that the parties are entitled to equal opportunity to access Relevant and not otherwise Impermissible Evidence or an accurate summary of that evidence;
 - f. If applicable, any Institution policy that prohibits knowingly making false statements or submitting false information during grievance procedures.
 - g. In the event the Institution decides to investigate additional allegations of Sex-Based Harassment by the Respondent against the Complainant, the Institution must provide additional written notice to all parties who are known.
 - h. To the extent the Institution has reasonable concerns for the safety of any person as a result of the Institution providing such notice, the Institution may reasonably delay providing written notice in order to address safety concerns appropriately. Reasonable concerns must be based on an individualized safety and risk analysis and not mere speculation or stereotypes.
- 3. Dismissal of Complaint.** The Institution must provide all procedures set forth in Section III.R of this Policy for dismissing a Complaint. For Student Complaints regarding Sex-Based Harassment, the Institution must obtain the Complainant's voluntary withdrawal in writing.
- 4. Written Notice of Meetings and Proceedings.** The Institution must provide written notice of the date, time, location, participants, and purpose of all meetings

or proceedings to any party whose participation is invited or expected, with sufficient time to prepare to participate.

5. **Advisors.** The Institution must provide the parties with the same opportunity to be accompanied to any meeting or proceeding by an advisor of their choice. The advisor may be, but is not required to be, an attorney. The Institution may not limit the party's choice or presence of any advisor except that the Institution may establish restrictions regarding the extent to which an advisor may participate, as long as the restrictions apply equally to all parties.
6. **Other Parties and Witnesses.** The Institution may, but is not required to, institute a policy to allow expert witnesses or other persons present at meetings or proceedings as long as the policy applies equally to all parties.
7. **Extensions of Time.** The Institution must allow for reasonable extensions of time on a case-by-case basis with written notice to the parties that describes the basis for the delay.
8. **Evidence.** The Institution must provide any party and any party's advisor with an equal opportunity to access Relevant and not otherwise Impermissible Evidence. If the Institution's policy provides for a live hearing, the parties must be permitted to review evidence in advance of the live hearing.
9. **Questioning of Parties and Witnesses.** The Institution must provide a process that enables the decision-maker to question parties and witnesses regarding evidence and to assess credibility to the extent credibility is Relevant, under the following conditions:
 - a. If the Institution does not conduct a live hearing, it must allow the investigator to ask questions regarding Relevant and not otherwise Impermissible Evidence, including questions of credibility, during meetings with parties and witnesses.
 - i. The Institution must allow each party to propose questions that the party wants to be asked of any party or witness and have those questions asked by the investigator; and
 - ii. The Institution must provide each party with an audio or video recording or transcript with enough time for the party to propose follow-up questions.
 - b. If the Institution conducts a live hearing, the Institution must allow the decision-maker to ask questions regarding Relevant and not otherwise Impermissible Evidence, including questions of credibility and:
 - i. Allow each party to propose questions that the party wants to be asked of any party or witness and have those questions asked by the decision-maker; or

- ii. Allow each party’s advisor to ask any party or witness such questions. Questioning may never be conducted by a party personally. If the questioned party does not have an advisor, the Institution must provide the party with an advisor, without charge, for purposes of questioning by the other party’s advisor. A Confidential Employee may not serve as an appointed advisor. An appointed advisor may be, but is not required to be, an attorney.
 - c. The decision-maker must determine whether a proposed question is Relevant and would not elicit Impermissible Evidence prior to the question being posed and must explain the decision to exclude any question that is not Relevant or would elicit Impermissible Evidence.
 - d. Any question that is Relevant and would not elicit Impermissible Evidence must be asked except questions that are unclear or harassing in nature. Parties must be given the opportunity to clarify questions.
 - e. A decision-maker may choose to place less or no weight on statements by a party or witness who refuses to respond to questions deemed Relevant that would not elicit Impermissible Evidence. The decision-maker must not draw an inference about whether Sex-Based Harassment occurred based on a party’s or witness’s refusal to respond to such questions.
10. **Live Hearing.** An Institution’s Sex-Based Harassment procedures need not provide for a live hearing. If the Institution chooses to conduct a live hearing, it may conduct the hearing with the parties physically in the same location or virtually (as long as the decision-maker and parties can simultaneously see the party or witness speaking). If a live hearing is conducted, an audio or video recording or transcript of the hearing must be made available to the parties for inspection and review.
11. **Written Determination.** An Institution must provide to all parties simultaneously a written determination as to whether Sex-Based Harassment occurred. The written determination must include:
- a. A description of the allegations;
 - b. Information about the policies and procedures that the Institution used to evaluate the allegations;
 - c. The decision-maker’s evaluation of Relevant and not otherwise Impermissible Evidence and determination whether Sex-Based Harassment occurred;
 - d. If the decision-maker finds that Sex-Based Harassment occurred, any disciplinary sanctions that will be imposed and any remedies that will be provided; and
 - e. The procedures for appeal.

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12. Appeals. The Institution must offer the parties an appeal from a determination as to whether Sex-Based Harassment occurred, and/or any dismissal of the Complaint. A written determination becomes final on the date that the Institution provides the parties with the written determination of the result of any appeal, or if no party appeals, the date on which an appeal would no longer be considered timely. The following are permitted bases for appeal:
- a. Procedural irregularity that would change the outcome;
 - b. New evidence that would change the outcome that was not reasonably available when the determination was made;
 - c. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.
 - d. The Institution may offer additional bases for appeal as long as they are available equally to all parties.

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Y. Informal Resolution Process. 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:

- 1. Obtains the parties' voluntary, written consent to proceed with the informal resolution process. 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 Complaints of Sex Discrimination.
- 2. May not require the parties to participate in an informal resolution process.
- 3. Provides the parties a written notice disclosing:
 - a. the allegations;
 - b. the requirements of the informal resolution process including that at any time prior to the parties' agreement to a resolution, any party may withdraw from the informal resolution process and initiate grievance procedures;
 - c. that the parties' agreement to a resolution at the conclusion of the informal resolution process precludes the parties from initiating or resuming grievance procedures arising from the same allegations;
 - d. the potential terms that may be requested or offered in an informal resolution agreement, including a notice that the agreement is binding only on the parties; and
 - e. what information will be maintained by the Institution and how the Institution could disclose such information for use in grievance procedures, if initiated or resumed.

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4. Does not offer or facilitate an informal resolution process to resolve allegations of Sexual Assault or sexual coercion.
5. Does not use the same facilitator for informal resolution to investigate or decide a matter under the grievance procedures.
6. Requires that 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.

Z. **Description of Student Rights.**¹⁷ Each Institution's grievance procedures shall include a description of the rights of Student Complainants and Respondents, including:

1. Treatment with dignity, respect, and sensitivity by Institution officials during all phases of the disciplinary proceedings;
2. A fair and impartial investigation;
3. Disciplinary proceedings and resolutions that are prompt and equitable and provide an opportunity for the parties to be heard;
4. Timely written notice of:
 - a. The reported violation, including the date, time, and location of the alleged violation, and the range of potential sanctions associated with the alleged violation;
 - b. The party's rights and responsibilities under the Institution's policies and procedures and information regarding other civil and criminal options;
 - c. The date, time, and location of each hearing, meeting, or interview that the party is required or permitted to attend;
 - d. A final determination made by the adjudicating official or body regarding whether a policy violation occurred and the basis for the determination;
 - e. Any sanction imposed, as permitted by law; and
 - f. The party's rights to appeal and a description of the appeal process;
5. Participation in the disciplinary proceedings, including:
 - a. 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;

Deleted: <#>Obtains the parties' voluntary, written consent to the informal resolution process; and ¶

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Confidentiality. Describe any institutional policies governing confidentiality, including that: Formal investigations must

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Institutions must maintain as confidential any Supportive Measures provided to

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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. ¶

Prohibited Content. In addition to other prohibitions, an institution's policies and

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Deleted: <#>Require the institution to wait until a concurrent law enforcement proceeding concludes to begin any investigation, Supportive Measures, or hearing; and ¶
Discourage a student from retaining an attorney. ¶

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¹⁷ See Md. Code Ann., Educ. § 11-601.

- b. Offering testimony at a hearing or, if the institution's process does not include a hearing, to the adjudicating official;
 - c. 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;
 - d. 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;
 - e. Reviewing and providing written responses to reports and proposed findings; and
 - f. Appealing a determination or sanction;
6. 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:
- a. Attendance at hearings, meetings, and interviews with the party;
 - b. Private consultations with the party during hearings, meetings, and interviews, except during questioning of the party at a hearing; and
 - c. Assistance with the party's exercise of any right during the disciplinary proceedings;
7. 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;
8. Notice to a student party, presented in an appropriate and sensitive format, before the start of the disciplinary proceedings, of:
- a. The student's right to the assistance of an attorney or an advocate;
 - b. The legal service organizations and referral services available to the student; and
 - c. The student's right to have a personal supporter of the student's choice at any hearing, meeting, or interview during the disciplinary proceedings;
9. Access to counsel paid for by MHEC for a current or former student who makes a Complaint or responds to a Complaint on which a 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, unless the student knowingly and voluntarily chooses not to have counsel, in accordance with COMAR 13B.09.01:
- a. A student may select and retain an attorney before the conclusion of the formal Title IX proceedings;

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- b. 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
- c. 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.

IV. Institutional Compliance

A. Other Federal and State Nondiscrimination Laws

Nothing in this Policy affects Institutions’ obligations to address, or employees’ rights to report, discrimination and retaliation under other federal and State nondiscrimination laws.

B. Clery Act Compliance

In handling Sex-Based 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 achieved by actions under this Policy.

C. Agreements with Local Law Enforcement and Rape Crisis Programs¹⁸

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.

D. Campus Sexual Assault Climate Survey

At least every two (2) years, 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. Each Institution shall submit to MHEC a report in accordance with the requirements set forth in Md. Code Ann., Educ. § 11-601(g).

¹⁸ See Md. Code Ann., Educ. § 11-601.

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A. Prevention and Awareness Education ¶
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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.

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E. Recordkeeping for Sex Discrimination Complaints and Notifications

Each Institution must maintain for seven years records of:

1. Each Complaint of Sex Discrimination, records documenting the informal resolution process or grievance procedure, and the resulting outcome.
2. For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute Sex Discrimination, records documenting any action taken.
3. All materials used for Title IX training of students or employees.

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

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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; ¶

Any appeal and the result thereof; ¶
Any informal resolution and the result therefrom; and ¶

Deleted: to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. ¶

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Each institution must make these

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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. ¶

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VI-1.60 - UNIVERSITY SYSTEM OF MARYLAND POLICY ON SEX DISCRIMINATION
(Approved by the Board of Regents, June 27, 2014; Amended June 19, 2015; Amended June 21, 2019; Amended July 22, 2020, Amended July __, 2024¹).

PURPOSE AND APPLICABILITY

The University System of Maryland (USM) is committed to providing a working and learning environment free from Sex Discrimination² 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 Sex Discrimination, 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 are subject to this Policy. This Policy applies to all conduct occurring within an institution’s Education Program or Activity.

This Policy addresses the obligations of USM institutions and the USM Office (together, the Institutions) to address Sex Discrimination prohibited by Title IX of the Education Amendments of 1972 (Title IX) and Sex Discrimination prohibited by other federal laws and Maryland law. Federal regulations implementing Title IX require that institutions implement certain procedures when they obtain information about conduct that may reasonably constitute Sex Discrimination. For conduct covered by this Policy but not prohibited under Title IX, Institutions may choose to provide alternative policies and procedures for the adjudication of complaints.

POLICY

I. Definitions

For purposes of this Policy, the following definitions apply:

- A. Complainant** is an individual who is alleged to have been subjected to Sex Discrimination who is a student or employee or who was participating or attempting to participate in the Education Program or Activity at the time of the alleged Sex Discrimination, whether or not that individual initiated the Complaint.³

¹ This amendment is effective August 1, 2024.

² Capitalized terms are defined in this Policy.

³ A parent, guardian, or other authorized legal representative with the legal right to act on behalf of the Complainant may also file a Complaint on behalf of a Complainant.

- B. Complaint** means an oral or written request to the Institution that objectively can be understood as a request to investigate and make a determination about alleged Sex Discrimination.
- C. Confidential Employees** are (1) employees whose communications are privileged⁴ or confidential under Federal or State law; (2) employees whose communications are specifically designated as confidential for the purpose of providing services related to potential Sex Discrimination; or (3) employees who are conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination—but the employee’s confidential status is only with respect to information received while conducting the study.⁵
- D. Education Program or Activity** of an Institution includes all operations of the Institution in the United States, including, but not limited to, all conduct⁶ over which an Institution exercises disciplinary authority and all conduct that occurs in any building owned or controlled by a student organization that is officially recognized by an Institution. An Institution must address a sex-based hostile environment under its Education Program or Activity even when some conduct alleged to be contributing to the hostile environment occurred outside the Institution’s Education Program or Activity or outside the United States.
- E. Employees with Authority** are employees, other than Confidential Employees, who have authority to institute corrective measures or who are responsible for administrative leadership, teaching, or advising.
- F. 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.

⁴ The employee’s confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies.

⁵ Each Institution’s Notice of Nondiscrimination (as defined in Section II.D) and policy shall conspicuously publish the names of all Confidential Employees, except employees whose confidential status is only with respect to their conducting an institutional review board-approved human-subjects research study designed to gather information about Sex Discrimination.

⁶ Such conduct may occur in-person or through the use of technology such as e-mail, texts, social media applications, etc.

- G. 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.
- H. Parental Status** means the current, potential, or past status of an individual who is, with respect to any person under the age of 18 or over the age of 18 but incapable of self-care because of a disability: (1) a biological, step, adoptive, or foster parent; (2) a legal custodian or guardian; (3) in loco parentis; or (4) actively seeking legal custody, guardianship, visitation, or adoption.
- I. Pregnancy or Related Conditions** means the current, past, or potential presence of any of the following conditions:
1. Pregnancy, childbirth, termination of pregnancy, or lactation
 2. Recovery from pregnancy, childbirth, termination of pregnancy, or lactation
 3. Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation.
- J. Relevant** means related to the allegations of sex discrimination under investigation as part of the grievance procedures. Questions are Relevant when they seek evidence which may aid a decisionmaker in determining whether the alleged sex discrimination occurred. Evidence is Relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.
- K. Remedies** are measures provided, as appropriate, to a Complainant or any other person the Institution identifies as having had their equal access to the Institution's Education Program or Activity limited or denied by Sex Discrimination. These measures are provided to restore or preserve that person's access to the Institution's Education Program or Activity after the Institution determines that Sex Discrimination occurred.
- L. Respondent** means an individual alleged to be the perpetrator of conduct that could constitute Sex Discrimination.
- M. 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 reported information, made a Complaint, testified, assisted, participated or refused to participate in any manner in an investigation, proceeding, or hearing related to Sex Discrimination. Retaliation includes bringing charges against an individual for violations of other institutional policies that do not

involve Sex Discrimination but arise out of the same facts or circumstances as a Complaint, for the purpose of interfering with any right or privilege secured by Title IX.

N. 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 sexual acts directed against another person and include:

1. **Non-Consensual Sexual Penetration**— Penetration, no matter how slight, of the genital or anal opening of the body of another person with any body part or object, or oral penetration by a sex organ of 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.
2. **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.
3. **Incest**—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
4. **Statutory Rape**—Nonforcible sexual intercourse with a person who is under the statutory age of consent.⁷

O. Sex-Based Harassment means Sex Discrimination prohibited by Title IX that satisfies one or more of the following:

1. **Quid pro quo harassment**— An employee, agent, or other person authorized by the Institution to provide an aid, benefit, or service under the Institution’s Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct.
2. **Hostile Environment Harassment**— Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the Institution’s Education Program or Activity (*i.e.*, creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
 - a. The degree to which the conduct affected the Complainant’s ability to access the Institution’s Education Program or Activity;
 - b. The type, frequency, and duration of the conduct;

⁷ See Md. Code Ann., Crim. Law §§ 3-301 through 3-307.

- c. The parties' ages, roles within the Institution's Education Program or Activity, previous interactions, and other factors about each party that may be Relevant to evaluating the effects of the conduct;
- d. The location of the conduct and the context in which the conduct occurred; and
- e. Other sex-based harassment in the Institution's Education Program or Activity.

3. Sexual Assault, Dating Violence, Domestic Violence, or Stalking.

P. Sex-Based Harassment prohibited by Md. Code Ann., State Gov't § 20-601⁸ means unwelcome and offensive conduct, which need not be severe or pervasive, when the conduct is based on sex, sexual orientation, or gender identity or consists of unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature; and

- 1. Submission to the conduct is made either explicitly or implicitly a term or condition of the employment of an individual;
- 2. Submission to or rejection of the conduct is used as a basis for employment decisions affecting the individual; or
- 3. Based on the totality of the circumstances, the conduct creates a working environment that a reasonable person would perceive to be abusive or hostile.

Q. Sex Discrimination means exclusion from participation in or being denied the benefits of any Education Program or Activity of an Institution on the basis of sex, including sex stereotypes, sex characteristics, sexual orientation, gender identity, and Pregnancy or Related Conditions. Sex-Based Harassment is a form of Sex Discrimination.

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

S. Student means a person who has gained admission to an Institution.

T. Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:

- 1. Restore or preserve that party's access to the Institution's Education Program or Activity, including measures that are designed to protect the safety of the parties or the Institution's educational environment; or

⁸ This definition applies only to sex-based harassment of employees that does not constitute Sex-Based Harassment prohibited by Title IX. *See* Md. Code Ann., State Gov't §§ 20-601 through 20-611.

2. Provide support during the Institution's grievance procedures.

Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact applied to one or more parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, training and education programs related to Sex-Based Harassment, and other similar measures.

II. Institutional Administration of Title IX Policies and Procedures

A. Oversight of Title IX Compliance

1. Title IX Coordinator

Each 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."

2. Title IX Team

Depending on the size and specific needs of the Institution, it 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 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, delegating, and supervising the activities of the Title IX Team.

B. Training

All employees shall be trained upon hire, upon change of position that alters their duties under Title IX or this Policy, and annually thereafter. Training materials must not rely on sex stereotypes.

1. All Employees

Each Institution must develop and implement training for all employees regarding the Institution's obligation to address Sex Discrimination. The training must include, at a minimum, the scope of conduct that may constitute Sex Discrimination, the definition of Sex-Based Harassment, and all applicable notification and information requirements that apply to each employee's specific designation (all employees, Confidential Employees, and Employees with Authority).

Training for employees shall also comply with Md. Code Ann., State Pers. & Pens. § 2-203.1.

2. Investigators, decision-makers, and individuals who are responsible for implementing grievance procedures or have the authority to modify or terminate Supportive Measures.

Investigators, decision-makers, and individuals who are responsible for implementing grievance procedures or have the authority to modify or terminate Supportive Measures must receive training on the topics required for all employees (above), as well as training on the following (to the extent of their responsibilities):

- a. The Institution's responsibilities, including the scope of the Institution's Education Program or Activity and the Institution's obligations to address Sex Discrimination (*see* 34 C.F.R. § 106.44);
- b. The Institution's grievance procedures (including how to conduct an investigation);
- c. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- d. The meaning and application of the term "Relevant" in relation to questions and evidence, and the types of evidence that are impermissible (Impermissible Evidence, defined in Section III.P) regardless of relevance; and
- e. Issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking and conducting an investigation and hearing process that protects the safety of individuals and promotes accountability.

3. Facilitators of an informal resolution process

In addition to receiving the training required for all employees (above), facilitators of informal resolution processes must be trained on the rules and practices associated with the Institution's informal resolution processes, and on how to serve impartially, including by avoiding conflicts of interest and bias.

4. Title IX Coordinator and designees

In addition to all of the training requirements for all of the categories above, the Title IX Coordinator and any designees must be trained on their specific responsibilities, the specific actions required to prevent discrimination and ensure equal access (*see* 34 C.F.R. §§ 106.40(b)(3), 106.44(f) and (g)), the Institution's recordkeeping system and recordkeeping requirements, and any other training necessary to coordinate compliance with Title IX.

5. Preventive Education⁹

Each Institution must develop and implement preventive education for all employees and students, to help identify and reduce the occurrence of Sex Discrimination. At a minimum, these educational initiatives must contain information regarding what constitutes Sex-Based Harassment, definitions of consent and prohibited conduct, the Institution's procedures, bystander intervention, risk reduction, and the consequences of engaging in Sex-Based Harassment. These educational initiatives shall be for all incoming students and 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 also comply with Md. Code Ann., State Pers. & Pens. § 2-203.1.

C. Policies. Each Institution shall adopt and publish a policy¹⁰ that:

1. Includes a statement prohibiting Sex Discrimination in its Education Program or Activity;
2. Prohibits any policy, practice, or procedure, or any employment action, concerning the current, potential, or past Parental Status, family status, or marital status of a student, employee, or applicant (for admission or employment), that treats persons differently on the basis of sex.
3. Includes a statement prohibiting Retaliation;
4. Adopts the definitions in this Policy for Sex Discrimination and defines Relevant terms not defined in this Policy, such as consent;
5. Informs victims of a Sexual Assault of the right to file criminal charges with the appropriate law enforcement officials;
6. 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;
7. Designates the nearest hospitals equipped with the Maryland Department of State Police Sexual Assault Evidence Collection Kit;

⁹ See 34 C.F.R. § 668.46.

¹⁰ These policy provisions are required by Title IX, except where another law is cited.

8. Informs victims of the importance of preserving evidence as may be necessary to prove criminal conduct or obtain orders of protection;
9. Provides for full and prompt cooperation from Institution personnel in obtaining appropriate medical attention, including transporting a victim to the nearest designated hospital;
10. 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;
11. 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;
12. 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 Sex-Based Harassment to the Institution or law enforcement or participates in a Sex-Based Harassment matter as a witness, if the Institution determines that:
 - a. The violation occurred during or near the time of the alleged Sex-Based Harassment;
 - b. The student made the report of Sex-Based 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.
13. Provides for reasonable modifications of the Institution's policies, practices, or procedures for students experiencing Pregnancy or Related Conditions.
 - a. Each reasonable modification shall be based on the student's individualized needs, in consultation with the student.
 - b. A modification that would fundamentally alter the nature of the Institution's Education Program or Activity is not reasonable.
 - c. The Institution must allow the student to voluntarily access any separate and comparable portion of the Education Program or Activity.
 - d. The Institution must allow the student to take a voluntary leave of absence for a period of time determined by the student's medical provider, or the period of time permitted by the Institution's policy, whichever is greater. Upon return from a leave of absence, the student must be reinstated to the same academic status and (to the extent

- possible) extracurricular status that the student held when the leave began.
- e. The Institution may not require documentation for reasonable modifications unless it is necessary for the institution to determine what reasonable modifications are needed or whether to take additional actions.
14. Provides for reasonable accommodations for employees with known limitations related to Pregnancy or Related Conditions.¹¹
 - a. Each reasonable accommodation shall be based on the employee's individualized needs, in consultation with the employee, and in consideration of any medical documentation.
 - b. The Institution may request from the employee only the minimum documentation necessary to establish that the employee is experiencing Pregnancy or Related Conditions, and what adjustments are needed.
 - c. Reasonable accommodations may include temporary relief from essential functions of the employee's job, and in the case of an employee with insufficient accrued leave or no paid leave, voluntary leave of absence without pay.
 - d. At the conclusion of any accommodation, the employee shall be reinstated to the same status as before the accommodation without decrease in compensation or loss of promotional opportunities or any other right or privilege of employment.
 15. Provides for treating Pregnancy or Related Conditions in the same manner and under the same policies as any other temporary medical conditions for all job-related purposes, including commencement, duration, and extension of leave, payment of disability income, accrual of seniority and any other benefit or service, reinstatement, and any other fringe benefit offered to employees by virtue of employment.
 16. Provides for treating Pregnancy or Related Conditions in the same manner and under the same policies as any other temporary medical conditions with respect to medical or hospital benefits, services, or any other policies the Institution

¹¹ The Pregnant Workers Fairness Act requires accommodations for employees experiencing Pregnancy or Related Conditions. *See* 42 U.S.C. 2000gg(3); 29 C.F.R. § 1636. Allegations regarding failure to provide accommodations to employees with known limitations related to Pregnancy or Related Conditions are not covered by Title IX. Institutions may, but are not required to, address such allegations under procedures required for allegations of conduct prohibited by Title IX.

operates or participates in with respect to students in the Institution's Education Program or Activity.

17. Provides for a lactation space for all students, employees, and visitors, which may not be a bathroom, that is clean, shielded from view, free of intrusion from others, and may be used for expressing milk or breastfeeding as needed.
18. Prohibits requiring a student who is Pregnant or with a Related Condition to provide certification that the student is physically able to participate in a class, program, or activity, unless:
 - a. The certified level of physical ability or health is necessary for the class, program, or activity;
 - b. The recipient requires such certifications of all students participating in the class, program, or activity; and
 - c. The information obtained through the certification is not used as a basis for prohibited discrimination.
19. In circumstances where different treatment or separation on the basis of sex is permitted, prohibits different treatment or separation on the basis of sex in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as permitted by 20 U.S.C. §§ 1681 and 1686 and their corresponding regulations.¹²
20. Provides information on how individuals participating in the Institution's Education Program or Activity can contact the Institution's Confidential Employees (excluding those whose confidential status is only with respect to information received while conducting a research study).

D. Notice of Nondiscrimination. Each Institution must publish a Notice of Nondiscrimination in the following manner:

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 its Education Program or Activity, 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;

¹² For purposes of this provision, adopting a policy or engaging in a practice that prevents an individual from participating in an Education Program or Activity consistent with their gender identity subjects them to more than de minimis harm.

- b. A statement that inquiries concerning the application of Title IX may be referred to the Institution's Title IX Coordinator or to the Office for Civil Rights of the U.S. Department of Education, or both; and
- c. The name or title, office address, email address, and telephone number of the employee or employees designated as the Title IX Coordinator(s).
- d. How to locate the Institution's Title IX Policy and grievance procedures.
- e. How to report information about conduct that may constitute Sex Discrimination.
- f. How to make a Complaint about Sex Discrimination.

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 in publications of general distribution that provide information to students and employees about the Institution's services and policies, including each handbook, catalog, announcement, bulletin, and application that it makes available to persons entitled to a notification. If necessary because of limitations in the format or size of any publication, Institutions may substitute a shortened statement that the Institution prohibits discrimination on the basis of sex and that individuals may report concerns or questions to the Title IX Coordinator and provide the location of the full notice on the Institution's website. Institutions may not distribute or publish any statement that they treat applicants, students, or employees differently on the basis of sex, except as permitted by Title IX.

III. Institutional Response to Information About Sex Discrimination

An Institution with knowledge of conduct that may reasonably constitute Sex Discrimination or Retaliation in its Education Program or Activity must respond promptly and effectively. Each Institution shall adopt and publish grievance procedures. If an Institution adopts grievance procedures that apply to some, but not all, Complaints, the procedures must articulate consistent principles for how the Institution will determine which procedures apply. All procedures to address Sex Discrimination or Retaliation prohibited by Title IX must include the following provisions:¹³

¹³ Institutions may, but are not required to, use the same grievance procedures to address Sex Discrimination or Retaliation against employees not prohibited by Title IX but prohibited by Maryland law or other federal laws.

A. Monitoring. The Title IX Coordinator must:

1. Monitor the Education Program or Activity for barriers to reporting information about conduct that reasonably may constitute Sex Discrimination; and
2. Take steps reasonably calculated to address such barriers.

B. Notification Requirements. All Institution employees must notify the Title IX Coordinator or provide Students or other persons with the contact information of the Title IX Coordinator under the following circumstances:

1. **Pregnancy or Related Conditions** – If a Student, or a person who has the legal right to act on behalf of the Student, informs any employee of the Student’s Pregnancy or Related Conditions, the employee must provide that person with the Title IX Coordinator’s contact information and inform them that the Title IX Coordinator can coordinate specific actions to ensure equal access and prevention of discrimination. Employees need not provide the Title IX Coordinator’s contact information if the employee reasonably believes that the Title IX Coordinator has been notified.
2. **Sex Discrimination** – When an employee becomes aware of information about conduct that reasonably may constitute Sex Discrimination or Retaliation, they are required to take the following action based on their designation:
 - a. **Confidential Employees** must inform any person who communicates information about conduct that may reasonably constitute Sex Discrimination that they are Confidential Employees, circumstances in which they are not required to notify the Title IX Coordinator about conduct that reasonably may constitute Sex Discrimination, how to contact the Title IX Coordinator and how to initiate a Complaint, and that the Title IX Coordinator may be able to offer and coordinate Supportive Measures as well as initiate an informal resolution process or investigation under the grievance procedures.
 - b. **Employees with Authority** must notify the Title IX Coordinator when they obtain information about conduct that may reasonably constitute Sex Discrimination.
 - c. **All Employees** who are not Confidential Employees or Employees with Authority shall either (1) notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute Sex Discrimination or (2) provide the contact information of the Title IX Coordinator and information about how to make a Complaint to any person who provides the employee with information about conduct that may reasonably constitute Sex Discrimination.

- C. Response to Notification.** Upon receiving from an employee notification of conduct that may reasonably constitute Sex Discrimination or Retaliation, the Title IX Coordinator must:
1. Treat the Complainant and Respondent equitably;
 2. Offer to coordinate Supportive Measures, as appropriate;
 3. Notify the Complainant (or if the Complainant is unknown, the person who reported the information) of the Institution's grievance procedures.
- D. Emergency Removal.** An Institution may remove a Respondent from the Institution's Education Program or Activity on an emergency basis, provided that the Institution:
1. Undertakes an individualized safety and risk analysis;
 2. Determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of Sex Discrimination justifies removal; and
 3. Provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.
- E. Initiation of Complaint.** Upon notification by a Complainant or an employee¹⁴ of information about conduct that reasonably may constitute Sex Discrimination or Retaliation, the Title IX Coordinator must:
1. Initiate grievance procedures in response to a Complaint; or
 2. In the absence of a Complaint or the withdrawal of any of the allegations in a Complaint, determine whether to initiate a Complaint of Sex Discrimination or Retaliation in consideration of, at a minimum, the following factors:
 - a. Whether the Complainant has requested not to proceed with the Complaint;
 - b. The Complainant's reasonable safety concerns regarding initiating a Complaint;
 - c. The risk that additional acts of Sex Discrimination or Retaliation would occur if a Complaint is not initiated;
 - d. The severity of the alleged Sex Discrimination or Retaliation, including whether the discrimination, if established, would require the removal of the Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent recurrence;
 - e. The age and relationship of the parties, including whether the Respondent is an employee;
 - f. The scope of the alleged Sex Discrimination or Retaliation, including information suggesting a pattern, ongoing Sex Discrimination or

¹⁴ A Complaint of Sex Discrimination other than Sex-Based Harassment may also be initiated by (1) any student or employee; and (2) any person other than a student or employee who was participating in or attempting to participate in the Institution's Education Program or Activity at the time of the alleged Sex Discrimination.

- Retaliation, or Sex Discrimination or Retaliation alleged to have impacted multiple individuals;
- g. The availability of evidence to assist a decision-maker in determining whether sex discrimination occurred; and
 - h. Whether the Institution could end the alleged Sex Discrimination or Retaliation and prevent its recurrence without initiating grievance procedures.
3. If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct, as alleged, prevents the Institution from ensuring equal access on the basis of sex to its Education Program or Activity, the Title IX Coordinator may initiate a Complaint. If the Title IX Coordinator initiates a Complaint, the Title IX Coordinator must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing Supportive Measures.
 4. The Title IX Coordinator need not initiate a Complaint or consider the factors in paragraph 2 if the Title IX Coordinator reasonably determines that the conduct as alleged could not constitute Sex Discrimination or Retaliation.

F. Supportive Measures. The Institution must offer and coordinate Supportive Measures. The Institution's policy must describe the range of Supportive Measures available to Complainants and Respondents. The Institution must provide the parties with a timely opportunity to seek, from an appropriate and impartial decision-maker, modification, or reversal of the decision to provide, deny, modify, or terminate Supportive Measures applicable to them. The impartial decision-maker must be someone other than the employee who made the challenged decision and must have authority to modify or reverse the decision, if the impartial decision-maker determines that the initial decision to provide, deny, modify, or terminate the Supportive Measures was inconsistent with the definition of Supportive Measures. The Institution must also provide a party with the opportunity to seek additional modification or termination of a Supportive Measure applicable to them if circumstances change materially. The Institution must not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of Supportive Measures provided to another party, unless necessary to provide the Supportive Measure, restore or preserve the party's access to the Education Program or Activity, or when an exception applies.

G. How to Report Sex Discrimination or Retaliation.

1. Any person may report Sex Discrimination or Retaliation (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute Sex Discrimination or Retaliation) in person, by mail, by telephone, or by email, 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.

2. Such a report may be made at any time (including during nonbusiness hours) by using the telephone number or email address or by mail to the office address listed for the Title IX Coordinator.

H. Equitable Treatment. Complainants and Respondents will be treated equitably by:

1. Providing remedies to a Complainant where a determination of responsibility for Sex Discrimination or Retaliation has been made against the Respondent, and by using procedures that comply with Title IX when investigating and adjudicating allegations of Sex Discrimination or Retaliation 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);
2. Providing an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence; and
3. Applying any provisions, rules, or practices used to investigate and adjudicate complaints under Title IX equally to both parties.

I. Objective Evaluation of Evidence. Institutions' procedures must 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.

J. No Conflict or Bias. Institutions' procedures must 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.

K. Presumption of Non-Responsibility. Institutions' procedures must 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.

L. Reasonably Prompt Time Frames. Institutions' procedures must 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.

- M. Privacy.** Institutions' procedures must require that reasonable steps be taken to protect the privacy of the parties and witnesses during the process, provided that steps do not restrict the ability of the parties to obtain and present evidence, consult with others, or otherwise prepare for or participate in the process.
- N. Sanctions and Remedies.** Institutions' procedures must 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.
- O. Standard of Evidence.** Institutions' procedures must specify "by a preponderance of the evidence" as the standard of evidence for all Complaints of Sex Discrimination.
- P. Impermissible Evidence.** An Institution may not elicit, consider, require, rely upon, allow, disclose, or otherwise use any of the following as evidence (Impermissible Evidence), regardless of whether it is Relevant:
1. Information protected under a legally recognized privilege or evidence provided to a Confidential Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
 2. Records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the treatment of a party or witness, unless the Institution obtains that party's or witness's voluntary, written consent to do so.
 3. A Student's history of mental health counseling, treatment, or diagnosis, unless the Student consents.
 4. Evidence relating to a Complainant's sexual interests or prior sexual conduct, except the following is permitted:
 - a. Evidence about the Complainant's prior sexual conduct that is offered to prove that someone other than the Respondent committed the alleged conduct; or
 - b. Evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to alleged Sex-Based Harassment. The fact of prior consensual sexual conduct between Complainant and Respondent does not by itself demonstrate or imply that the Complainant's consent occurred in the events alleged.
 5. Evidence relating to a Respondent's prior sexual history with an individual other than a party to the proceedings, except to prove prior sexual misconduct; support a claim that the Respondent has an ulterior motive; or impeach the Respondent's credibility after the Respondent has put their own prior sexual conduct at issue.
- Q. Notice.** Upon initiation of a Complaint, the Institution must provide written notice to known parties of the following:

1. The investigation and adjudication process, including any informal process available;
2. The allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. “Sufficient details” include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Sex Discrimination, and the dates and locations of the alleged incidents, if known;
3. That retaliation is prohibited;
4. That the parties are entitled to an equal opportunity to access the Relevant and not otherwise Impermissible Evidence or an accurate description of evidence..

R. Dismissal of Complaints.

1. An Institution may dismiss a Complaint for any of the following reasons:
 - a. The Institution is unable to identify the Respondent after taking reasonable steps to do so;
 - b. The Respondent is not participating in the Education Program or Activity or is not employed by the Institution;
 - c. The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint on behalf of the Institution, and the Institution determines that without the Complainant’s withdrawn allegations any conduct that remains would not constitute Sex Discrimination, if proven;
 - d. The Institution determines that the conduct alleged, if proven, would not constitute Sex Discrimination, after taking reasonable steps to clarify the allegations with the Complainant.
2. Upon dismissal, an Institution must promptly notify the Complainant of the basis of the dismissal and the opportunity to appeal.
3. Upon dismissal, if the dismissal occurs after the Respondent has been notified of the allegations, an Institution must promptly notify the Respondent of the basis of the dismissal and the opportunity to appeal.
4. The following are permitted bases for appeal:
 - a. Procedural irregularity that would change the outcome;
 - b. New evidence that would change the outcome that was not reasonably available when the determination was made;
 - c. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that would change the outcome.
 - d. The Institution may offer additional bases for appeal as long as they are available equally to all parties.

5. If a dismissal is appealed, the Institution must:
 - a. Notify the parties, including providing notice of the allegations to the Respondent if not previously notified;
 - b. Implement appeal procedures equally for the parties;
 - c. Ensure that the appeal decision-maker has received training and did not participate in the investigation or dismissal;
 - d. Provide the parties a reasonable and equal opportunity to make a statement in support of or challenging the outcome; and
 - e. Notify the parties of the result of the appeal and the basis for the result.
6. Upon dismissal, the Title IX Coordinator must offer Supportive Measures to the Complainant or Respondent, as appropriate.
7. Upon dismissal, the Title IX Coordinator must take appropriate and prompt steps to ensure that Sex Discrimination does not continue or recur.

S. Consolidation of Complaints. An Institution may consolidate Complaints of Sex Discrimination 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 Sex Discrimination arise out of the same facts or circumstances.

T. Investigation of Complaint. When investigating a Complaint and throughout the investigation and adjudication process, the Institution must:

1. Ensure that the burden is on the Institution—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether Sex Discrimination or Retaliation occurred;
2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
3. Review all evidence gathered through the investigation and determine what evidence is Relevant and what is Impermissible Evidence regardless of relevance; and
4. Provide each party with an equal opportunity to access the evidence that is Relevant to the allegations of Sex Discrimination and not otherwise impermissible, in the following manner:
 - a. The Institution must provide an equal opportunity to access either the Relevant and not Impermissible Evidence or a description of this evidence. If the Institution provides a description, it must further provide the parties with an equal opportunity to access the Relevant and not otherwise Impermissible Evidence upon request of any party;
 - b. The Institution must provide a reasonable opportunity to respond to the evidence or to the accurate description of the evidence;
 - c. The Institution must take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedure. Disclosure of evidence or

information for purposes of administrative or litigation proceedings related to the Complaint is authorized.

U. Questioning of Parties and Witnesses. An institution must provide a process that enables the decision-maker to question parties and witnesses and adequately assess a party's or witness's credibility to the extent credibility is in dispute and Relevant to evaluating one or more allegations of Sex Discrimination.

V. Determination Regarding Responsibility. Following an investigation, the Institution must:

1. Use the preponderance of the evidence standard of proof to determine whether Sex Discrimination or Retaliation occurred.
2. Notify the parties in writing of the determination of whether Sex Discrimination occurred, including the rationale for the determination, and the procedures and permissible bases for the Complainant and Respondent to appeal.
3. If there is a determination that Sex Discrimination or Retaliation has occurred, as appropriate, require the Title IX Coordinator to coordinate the implementation of remedies, coordinate the imposition of any disciplinary sanctions, including notification to the Complainant of any disciplinary sanctions imposed upon the Respondent, and take other prompt and appropriate steps to ensure that the Sex Discrimination or Retaliation does not continue or recur.
4. An Institution may not impose discipline on a Respondent for Sex Discrimination or Retaliation unless there is a determination at the conclusion of the Institution's grievance procedures that the Respondent engaged in Sex Discrimination or Retaliation.
5. An Institution may not discipline a party, witness, or others participating in the process for making a false statement or engaging in consensual sexual conduct based solely on the Institution's determination whether or not Sex Discrimination occurred.

W. Appeals. An Institution must offer the parties an appeal process that, at a minimum, is the same as is offered in comparable proceedings at the Institution such as for other complaints of discrimination.

X. Additional Requirements for Student Complaints of Sex-Based Harassment.¹⁵ For Complaints alleging Sex-Based Harassment involving Student Complainants or Respondents, Institutions must provide for the following procedures in addition to the above:

1. **Student Employees.** When a Complainant or Respondent in a matter alleging Sex-Based Harassment is both a student and an employee, the Institution should

¹⁵ See 34 C.F.R. § 106.46.

make a fact-specific determination as to whether the requirements of this section apply in the individual circumstances. The Institution should specifically consider, at a minimum, whether the parties' primary relationship is employment or education and whether the alleged conduct occurred while the student-employee was performing employment-related work.

2. **Additional Written Notice.** Upon initiation of an investigation for student Complaints of Sex-Based Harassment, the Institution must provide written notice to all parties whose identity is known with sufficient time for all parties to prepare for any initial interview. The notice must contain:
 - a. All notices required in Sections III.A-W of this Policy;
 - b. A statement that the Respondent is presumed not responsible until a determination is made;
 - c. A statement that the parties will have an opportunity to present Relevant and not otherwise Impermissible Evidence to a trained, impartial decision-maker;
 - d. A statement that an advisor is permitted and that the advisor may be, but is not required to be, an attorney;
 - e. A statement that the parties are entitled to equal opportunity to access Relevant and not otherwise Impermissible Evidence or an accurate summary of that evidence;
 - f. If applicable, any Institution policy that prohibits knowingly making false statements or submitting false information during grievance procedures.
 - g. In the event the Institution decides to investigate additional allegations of Sex-Based Harassment by the Respondent against the Complainant, the Institution must provide additional written notice to all parties who are known.
 - h. To the extent the Institution has reasonable concerns for the safety of any person as a result of the Institution providing such notice, the Institution may reasonably delay providing written notice in order to address safety concerns appropriately. Reasonable concerns must be based on an individualized safety and risk analysis and not mere speculation or stereotypes.
3. **Dismissal of Complaint.** The Institution must provide all procedures set forth in Section III.R of this Policy for dismissing a Complaint. For Student Complaints regarding Sex-Based Harassment, the Institution must obtain the Complainant's voluntary withdrawal in writing.
4. **Written Notice of Meetings and Proceedings.** The Institution must provide written notice of the date, time, location, participants, and purpose of all meetings

or proceedings to any party whose participation is invited or expected, with sufficient time to prepare to participate.

5. **Advisors.** The Institution must provide the parties with the same opportunity to be accompanied to any meeting or proceeding by an advisor of their choice. The advisor may be, but is not required to be, an attorney. The Institution may not limit the party's choice or presence of any advisor except that the Institution may establish restrictions regarding the extent to which an advisor may participate, as long as the restrictions apply equally to all parties.
6. **Other Parties and Witnesses.** The Institution may, but is not required to, institute a policy to allow expert witnesses or other persons present at meetings or proceedings as long as the policy applies equally to all parties.
7. **Extensions of Time.** The Institution must allow for reasonable extensions of time on a case-by-case basis with written notice to the parties that describes the basis for the delay.
8. **Evidence.** The Institution must provide any party and any party's advisor with an equal opportunity to access Relevant and not otherwise Impermissible Evidence. If the Institution's policy provides for a live hearing, the parties must be permitted to review evidence in advance of the live hearing.
9. **Questioning of Parties and Witnesses.** The Institution must provide a process that enables the decision-maker to question parties and witnesses regarding evidence and to assess credibility to the extent credibility is Relevant, under the following conditions:
 - a. If the Institution does not conduct a live hearing, it must allow the investigator to ask questions regarding Relevant and not otherwise Impermissible Evidence, including questions of credibility, during meetings with parties and witnesses.
 - i. The Institution must allow each party to propose questions that the party wants to be asked of any party or witness and have those questions asked by the investigator; and
 - ii. The Institution must provide each party with an audio or video recording or transcript with enough time for the party to propose follow-up questions.
 - b. If the Institution conducts a live hearing, the Institution must allow the decision-maker to ask questions regarding Relevant and not otherwise Impermissible Evidence, including questions of credibility and:
 - i. Allow each party to propose questions that the party wants to be asked of any party or witness and have those questions asked by the decision-maker; or

- ii. Allow each party’s advisor to ask any party or witness such questions. Questioning may never be conducted by a party personally. If the questioned party does not have an advisor, the Institution must provide the party with an advisor, without charge, for purposes of questioning by the other party’s advisor. A Confidential Employee may not serve as an appointed advisor. An appointed advisor may be, but is not required to be, an attorney.
 - c. The decision-maker must determine whether a proposed question is Relevant and would not elicit Impermissible Evidence prior to the question being posed and must explain the decision to exclude any question that is not Relevant or would elicit Impermissible Evidence.
 - d. Any question that is Relevant and would not elicit Impermissible Evidence must be asked except questions that are unclear or harassing in nature. Parties must be given the opportunity to clarify questions.
 - e. A decision-maker may choose to place less or no weight on statements by a party or witness who refuses to respond to questions deemed Relevant that would not elicit Impermissible Evidence. The decision-maker must not draw an inference about whether Sex-Based Harassment occurred based on a party’s or witness’s refusal to respond to such questions.
10. **Live Hearing.** An Institution’s Sex-Based Harassment procedures need not provide for a live hearing. If the Institution chooses to conduct a live hearing, it may conduct the hearing with the parties physically in the same location or virtually (as long as the decision-maker and parties can simultaneously see the party or witness speaking). If a live hearing is conducted, an audio or video recording or transcript of the hearing must be made available to the parties for inspection and review.
11. **Written Determination.** An Institution must provide to all parties simultaneously a written determination as to whether Sex-Based Harassment occurred. The written determination must include:
- a. A description of the allegations;
 - b. Information about the policies and procedures that the Institution used to evaluate the allegations;
 - c. The decision-maker’s evaluation of Relevant and not otherwise Impermissible Evidence and determination whether Sex-Based Harassment occurred;
 - d. If the decision-maker finds that Sex-Based Harassment occurred, any disciplinary sanctions that will be imposed and any remedies that will be provided; and
 - e. The procedures for appeal.

12. **Appeals.** The Institution must offer the parties an appeal from a determination as to whether Sex-Based Harassment occurred, and/or any dismissal of the Complaint. A written determination becomes final on the date that the Institution provides the parties with the written determination of the result of any appeal, or if no party appeals, the date on which an appeal would no longer be considered timely. The following are permitted bases for appeal:
 - a. Procedural irregularity that would change the outcome;
 - b. New evidence that would change the outcome that was not reasonably available when the determination was made;
 - c. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.
 - d. The Institution may offer additional bases for appeal as long as they are available equally to all parties.

Y. Informal Resolution Process. 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:

1. Obtains the parties' voluntary, written consent to proceed with the informal resolution process. 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 Complaints of Sex Discrimination.
2. May not require the parties to participate in an informal resolution process.
3. Provides the parties a written notice disclosing:
 - a. the allegations;
 - b. the requirements of the informal resolution process including that at any time prior to the parties' agreement to a resolution, any party may withdraw from the informal resolution process and initiate grievance procedures;
 - c. that the parties' agreement to a resolution at the conclusion of the informal resolution process precludes the parties from initiating or resuming grievance procedures arising from the same allegations;
 - d. the potential terms that may be requested or offered in an informal resolution agreement, including a notice that the agreement is binding only on the parties; and
 - e. what information will be maintained by the Institution and how the Institution could disclose such information for use in grievance procedures, if initiated or resumed.

4. Does not offer or facilitate an informal resolution process to resolve allegations of Sexual Assault or sexual coercion.
5. Does not use the same facilitator for informal resolution to investigate or decide a matter under the grievance procedures.
6. Requires that 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.

Z. Description of Student Rights.¹⁶ Each Institution's grievance procedures shall include a description of the rights of Student Complainants and Respondents, including:

1. Treatment with dignity, respect, and sensitivity by Institution officials during all phases of the disciplinary proceedings;
2. A fair and impartial investigation;
3. Disciplinary proceedings and resolutions that are prompt and equitable and provide an opportunity for the parties to be heard;
4. Timely written notice of:
 - a. The reported violation, including the date, time, and location of the alleged violation, and the range of potential sanctions associated with the alleged violation;
 - b. The party's rights and responsibilities under the Institution's policies and procedures and information regarding other civil and criminal options;
 - c. The date, time, and location of each hearing, meeting, or interview that the party is required or permitted to attend;
 - d. A final determination made by the adjudicating official or body regarding whether a policy violation occurred and the basis for the determination;
 - e. Any sanction imposed, as permitted by law; and
 - f. The party's rights to appeal and a description of the appeal process;
5. Participation in the disciplinary proceedings, including:
 - a. 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;

¹⁶ See Md. Code Ann., Educ. § 11-601.

- b. Offering testimony at a hearing, or, if the institution's process does not include a hearing, to the adjudicating official;
 - c. 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;
 - d. 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;
 - e. Reviewing and providing written responses to reports and proposed findings; and
 - f. Appealing a determination or sanction;
6. 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:
- a. Attendance at hearings, meetings, and interviews with the party;
 - b. Private consultations with the party during hearings, meetings, and interviews, except during questioning of the party at a hearing; and
 - c. Assistance with the party's exercise of any right during the disciplinary proceedings;
7. 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;
8. Notice to a student party, presented in an appropriate and sensitive format, before the start of the disciplinary proceedings, of:
- a. The student's right to the assistance of an attorney or an advocate;
 - b. The legal service organizations and referral services available to the student; and
 - c. The student's right to have a personal supporter of the student's choice at any hearing, meeting, or interview during the disciplinary proceedings;
9. Access to counsel paid for by MHEC for a current or former student who makes a Complaint or responds to a Complaint on which a 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, unless the student knowingly and voluntarily chooses not to have counsel, in accordance with COMAR 13B.09.01:
- a. A student may select and retain an attorney before the conclusion of the formal Title IX proceedings;

- b. 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
- c. 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.

IV. Institutional Compliance

A. Other Federal and State Nondiscrimination Laws

Nothing in this Policy affects Institutions’ obligations to address, or employees’ rights to report, discrimination and retaliation under other federal and State nondiscrimination laws.

B. Clery Act Compliance

In handling Sex-Based 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 achieved by actions under this Policy.

C. Agreements with Local Law Enforcement and Rape Crisis Programs¹⁷

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.

D. Campus Sexual Assault Climate Survey

At least every two (2) years, 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. Each Institution shall submit to MHEC a report in accordance with the requirements set forth in Md. Code Ann., Educ. § 11-601(g).

¹⁷ See Md. Code Ann., Educ. § 11-601.

E. Recordkeeping for Sex Discrimination Complaints and Notifications

Each Institution must maintain for seven years records of:

1. Each Complaint of Sex Discrimination, records documenting the informal resolution process or grievance procedure, and the resulting outcome.
2. For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute Sex Discrimination, records documenting any action taken.
3. All materials used for Title IX training of students or employees.

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

TOPIC: Convening Closed Session

COMMITTEE: Committee of the Whole

DATE OF MEETING: July 31, 2024

SUMMARY: The Open Meetings Act permits public bodies to close their meetings to the public in special circumstances outlined in §3-305 of the Act and to carry out administrative functions exempted by §3-103 of the Act. The Board of Regents will now vote to reconvene in closed session. As required by law, the vote on the closing of the session will be recorded. A written statement of the reason(s) for closing the meeting, including a citation of the authority under §3-305 and a listing of the topics to be discussed, is available for public review.

It is possible that an issue could arise during a closed session that the Board determines should be discussed in open session or added to the closed session agenda for discussion. In that event, the Board would reconvene in open session to discuss the open session topic or to vote to reconvene in closed session to discuss the additional closed session topic.

ALTERNATIVE(S): No alternative is suggested.

FISCAL IMPACT: There is no fiscal impact.

CHANCELLOR'S RECOMMENDATION: The Chancellor recommends that the BOR vote to reconvene in closed session.

COMMITTEE ACTION:

DATE:

BOARD ACTION:

DATE:

SUBMITTED BY: Denise Wilkerson, dwickerson@usmd.edu, 410-576-5734



STATEMENT REGARDING CLOSING A MEETING
OF THE USM BOARD OF REGENTS
SPECIAL BOR MEETING

Date: July 31, 2024
Time: Approximately 3:20 P.M.
Location: Zoom

STATUTORY AUTHORITY TO CLOSE A SESSION

Md. Code, General Provisions Article §3-305(b):

- (1) To discuss:
- (i) The appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or
 - (ii) Any other personnel matter that affects one or more specific individuals.
- (2) To protect the privacy or reputation of individuals with respect to a matter that is not related to public business.
- (3) To consider the acquisition of real property for a public purpose and matters directly related thereto.
- (4) To consider a preliminary matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State.
- (5) To consider the investment of public funds.
- (6) To consider the marketing of public securities.
- (7) To consult with counsel to obtain legal advice on a legal matter.
- (8) To consult with staff, consultants, or other individuals about pending or potential litigation.
- (9) To conduct collective bargaining negotiations or consider matters that relate to the negotiations.

- (10) To discuss public security, if the public body determines that public discussions would constitute a risk to the public or public security, including:
- (i) the deployment of fire and police services and staff; and

- (ii) the development and implementation of emergency plans.
- (11) [] To prepare, administer or grade a scholastic, licensing, or qualifying examination.
- (12) [] To conduct or discuss an investigative proceeding on actual or possible criminal conduct.
- (13) [] To comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter.
- (14) [] Before a contract is awarded or bids are opened, to discuss a matter directly related to a negotiation strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.
- (15) [] To discuss cybersecurity, if the public body determines that public discussion would constitute a risk to:
 - (i) security assessments or deployments relating to information resources technology;
 - (ii) network security information, including information that is:
 1. related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a governmental entity;
 2. collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
 3. related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity; or
 - (iii) deployments or implementation of security personnel, critical infrastructure, or security devices.

Md. Code, General Provisions Article §3-103(a)(1)(i):

[X] Administrative Matters

TOPICS TO BE DISCUSSED:

1. Meeting with President Nowaczyk as part of his performance review
2. Ratification of the USM MOU with AFSCME
3. Board committee assignments
4. Board officer election

REASON FOR CLOSING:

1. To maintain confidentiality of information associated with a performance review of a specific employee (§3-305(b)(1));
2. To maintain confidentiality of a discussion of a labor MOU before Board ratification (§3-305(b)(9));
3. To handle administrative matters concerning Board committee assignments and a Board officer election (§3-103(a)(1)(i)).