

University of Maryland Eastern Shore
POLICY FOR SEXUAL MISCONDUCT

POLICY STATEMENT

The University community is committed to maintaining and strengthening an educational, employment, and living environment founded on civility. Sexual misconduct, including sexual and gender-based harassment, sexual violence, dating violence, domestic violence, sexual assault, sexual exploitation, and sexual intimidation, is prohibited by University policy.

Sexual Misconduct is a form of sex discrimination prohibited by state and federal laws, including Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681, et seq.). The University will sanction community members found responsible for acts of sexual misconduct; however, such sanctions are not a substitute for civil or criminal liability. The University community endeavors to prevent, combat, and address sexual misconduct through education, training, clear policies, and the implication of accountability measures for violations of this policy.

All University community members are protected by this policy, regardless of sex, sexual orientation, gender identity and gender expression. This policy is applicable to University community members and affiliates regardless of geographic location, virtual location, or time of incident. This policy applies to sexual misconduct: (1) in any University facility or on any University property; (2) in connection with any University or University sponsored, recognized or approved program, visit or activity; (3) that impedes equal access to any University education program or activity or adversely impacts the employment of a member of the University community; or (4) that otherwise threatens the health or safety of a member of the University community. Nothing in this policy is intended to supersede or conflict with any federal compliance obligation.

APPLICABILITY

This policy applies to sexual misconduct that occurs on campus, or off campus in the context of any University program or activity, or among current members of the University community. This policy also applies to sexual misconduct that has a continuing adverse effect or creates a hostile environment on campus or in any University program or activity whether on or off campus including but not limited to, sexual misconduct in connection with an academic course assignment, internship, practicum, field trip, study abroad program, student teaching, research, or other University activity; or sexual misconduct in connection with any activity sponsored, conducted, or authorized by the University or by a recognized student organization.

When a recognized student organization has contributed to or created a hostile environment in connection with an incident of sexual misconduct, said organization will be subject to discipline and appropriate sanctions.

In situations not covered above, but where the sexual misconduct undermines the security of the University community or the integrity of the educational process or poses a serious threat to self or others, other applicable University procedures for general misconduct may be applied.

DEFINITIONS

For purposes of addressing complaints of sexual misconduct against or by University students and employees, the following uniform definitions shall be used by the University:

- **Advisor** means any person, who may assist, support, guide, and advise the respondent or complainant during the investigation, conduct proceedings, and/or related meetings. Advisors are not permitted to actively participate or speak during the investigation, proceedings and related meetings. In certain circumstances where a party may be unable to speak on their own behalf, an advisor may present a statement prepared by the party.
- **Campus security authority (CSA)** is a term used in the Clery Act to describe someone who has significant responsibility for student and campus activities. The Clery Act (34 CFR 668.46) defines a CSA as:
 - A campus police department or a campus security department of an institution.
 - Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department such as an individual who is responsible for monitoring entrance into institutional property.
 - Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.
 - An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings.
 - **Note:** *Pastoral and professional counselors are not considered a campus security authority when acting in their roles as a pastoral or professional counselor for the University.*
- **Clery Act** refers to the The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, (20 U.S.C. section 1092(f)), a federal law that requires institutions such as UMES to collect and publish statistics for certain crimes reported to have occurred on UMES's "Clery Geography" (i.e., occurring on campus, on public property within or immediately adjacent to campus, and on other non-campus UMES property), for the purpose of informing current and prospective students and employees. UMES publishes an Annual Security Report under the Clery Act, which contains these crime statistics as well as campus specific information on resources, campus emergency responses, safety and security policies, and disciplinary procedures. These crime statistics include, but are not limited to, domestic violence, dating violence, sexual assault, and stalking. Clery also requires "timely warnings" be issued to the campus community for crimes occurring on Clery Geography that are considered a serious or continuing threat to students or employees. Under Clery, any good-faith report of a crime occurring on Clery Geography must be included in the statistical data.
- **Complainant** refers to an individual who files a complaint of Prohibited Sex Discrimination alleging violation of this policy.
- **Consent** means knowing, voluntary and affirmatively communicated willingness to mutually participate in a particular sexual activity or behavior. It must be given by a person with the ability and capacity to exercise free will and make a rational and reasonable judgment. Consent may be expressed either by affirmative words or actions, as long as those words or actions create a mutually understandable permission regarding the conditions of sexual activity. Consent may be withdrawn at any time. Consent cannot be obtained by force, threat, coercion, fraud, manipulation, reasonable fear of injury, intimidation, or through the use of one's mental or physical helplessness or incapacity. Consent cannot be implied based upon the mere fact of a previous consensual dating or sexual relationship. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.
- **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.

- **Domestic Violence** means violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant, or by any other person against an adult or youth complainant who is protected from those acts by domestic or family violence laws of Maryland.
- **Employee** shall be synonymous with and include all employees working for the University of Maryland Eastern Shore – academic employees, including faculty, and staff, including full-time, part-time, and temporary (hourly) employees at any University campus or working on behalf of the University.
- **Finding of Responsibility** means that it is more likely than not that the Respondent has committed one or more acts of sexual misconduct. A preponderance of the evidence standard must be used when determining responsibility for sexual misconduct.
- **Hostile environment** means when conduct is sufficiently severe, pervasive or persistent to limit or deny a person’s ability to participate in or benefit from the University’s educational programs or affects employment.
- **Incapacitated** means a person is incapable of consent if they are unable to *understand the facts, nature, extent, or implications* of the situation due to drugs, alcohol, a mental disability, being asleep or unconscious, or based on their age. Consent does not exist when the individual initiating sexual activity *knew or should have known* of the other person’s incapacitation.
- **Interim Measures** means reasonable available steps an institution may take to protect the parties while a sexual misconduct investigation is pending.
- **Investigator** is a University official authorized to investigate reports of sexual misconduct under the procedures outlined in this policy.
- **Member of the University Community** includes any individual who is a student, staff, faculty member, University official, or any other individual employed by, or acting on behalf of, the University. An individual’s status in a particular situation shall be determined by the Investigator or Title IX Coordinator.
- **Notice** means to the extent possible, the parties shall be provided simultaneous written notice of the outcome of the sexual misconduct proceeding, the appeals process, and the appeal decision, if applicable. Written notice may be provided electronically through University of Maryland Eastern Shore email accounts.
- **Preponderance of the Evidence** is the standard used to determine whether a policy violation has occurred. The standard means that it has been determined that “it is more likely than not” that an allegation related to this policy was substantiated.
- **Respondent** means an individual of the University community alleged to have engaged in sexual misconduct as defined in this policy.
- **Responsible Employee** includes those University employees who have the authority to redress sexual misconduct, who have the duty to report incidents of sexual misconduct, or who a student could reasonably believe has this authority or duty.
 - The University’s responsible employees include, but are not limited to:
 - All instructors, including full-time professors, adjuncts, lecturers, associate instructors (AIs), teaching assistants (TAs), and any others who offer classroom instruction or office hours to students;
 - All advisors;
 - All coaches, and other athletic staff that interact directly with students;
 - All student affairs administrators;
 - All residential hall staff;

- All employees who work in offices that interface with students; and
- All supervisors and University officials.
- **Retaliation** means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or USM/UMES policy relating to sexual misconduct, or because an individual has made a report, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing related to sexual misconduct. Retaliation includes retaliatory harassment.
- **Sex/Gender-Based Discrimination** is verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on sex, sex-stereotyping, sexual orientation or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the University's education or work programs or activities.
- **Sexual Assault**
 - **Sexual Assault I.** – Non-Consensual Sexual Intercourse. Any act of sexual intercourse with another individual without consent. Sexual intercourse includes vaginal or anal penetration, however slight, with any body part or object, or oral penetration involving mouth-to-genital contact.
 - **Sexual Assault II.** – Non-Consensual Sexual Contact. Any intentional touching of the intimate parts of another person, causing another to touch one's intimate parts, or disrobing or exposure of another without consent. Intimate parts may include genitalia, groin, breast, or buttocks, or clothing covering them, or any other body part that is touched in a sexual manner. Sexual contact also includes attempted sexual intercourse.
- **Sexual Coercion** means the use of unreasonable pressure in an effort to compel another individual to initiate and continue sexual activity against the individual's will. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Coercion includes but is not limited to intimidation, manipulation, threats of emotional or physical harm, and blackmail. Examples of coercion include threatening to disclose another individual's private sexual information or threatening to harm oneself if the other party does not engage in the sexual activity.
- **Sexual Exploitation** means taking non-consensual or abusive sexual advantage of another person for one's own advantage or benefit or for the advantage or benefit of anyone other than the person being exploited.
- **Sexual Harassment** is any unwelcome sexual advance, unwelcome request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when: (1) Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a University System of Maryland ("USM") or UMES institution program or activity; (2) Submission to or rejection of such conduct by an individual is used as the basis for academic, employment, or activity or program participation related decisions affecting an individual; or (3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e., it is sufficiently severe or pervasive to create an intimidating, hostile, humiliating, demeaning or sexually offensive working, academic, residential or social environment.
- **Sexual Intimidation** means (1) threatening to sexually assault another person; (2) gender or sex-based stalking, including cyber-stalking; or (3) engaging in indecent exposure.
- **Sexual Misconduct** is an umbrella term that includes Dating Violence, Domestic Violence, Sexual Exploitation, Sexual Harassment, Sexual Intimidation, Sexual Violence, and Stalking.
- **Title IX Hearing Panel** is a standing group composed of students, faculty, and staff at UMES that manage student related matters. Hearing panel members receive 40 hours plus of in-person

and independent study-based training. Panel members can be faculty, staff, and/or students. Panelists apply through an application, complete in-person interviews, and are appointed by the President.

- **Sexual Violence** is a form of sexual harassment and refers to physical sexual acts perpetrated without consent. Sexual violence includes sexual assault, sexual battery, and sexual coercion.
- **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.
- **Title IX** refers to the portion of the federal Education Amendments of 1972 (20 U.S.C. section 1681-1688), which provides in part that “no person in the United States shall, on the basis of gender, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance”.
- **Title IX Coordinator** is the individual designated by the University to coordinate the University’s compliance with Title IX and respond to allegations of sexual misconduct by members of the University community. In some circumstances this can include his or her designee.
- **University** means University of Maryland Eastern Shore.
- **University of Maryland Eastern Shore Property** are buildings, grounds, and land that are owned by the University or controlled by the University via leases or other formal contractual arrangements to house ongoing UMES operations.

INTELLECTUAL INQUIRY AND DEBATE

In determining whether sexual misconduct has occurred and what type of remedy, if any, might be appropriate in a given case, the University will also consider the fact that free intellectual inquiry, debate, and constructive dialogue are vital to the University’s academic mission and must be protected even when the views expressed are unpopular or controversial. Accordingly, any form of speech or conduct that is protected by state or federal law, including the First Amendment, is not subject to this policy.

The definition of sexual harassment in this policy is meant neither to proscribe nor to inhibit discussions, in or out of the classroom, of complex, controversial, or sensitive matters, including matters involving sex, gender, sexuality, sexual orientation, sexual behavior, or gender identity or expression, when in the judgment of a reasonable person they arise for legitimate pedagogical purposes. This includes intellectual inquiry, debate, and dialogue on issues of sexual misconduct. The mere expression of views, words, symbols or thoughts that some people find offensive, does not create a hostile environment.

AWARENESS, EDUCATION, PREVENTION, AND TRAINING PROGRAMS

The campus shall publicize and provide ongoing educational programming for students, employees, and other members of the University community to promote awareness of the problems caused by sexual misconduct and to help prevent and attempt to reduce the risk of the occurrence of sexual misconduct. Educational programs will include information on how and where to report incidents of sexual misconduct, resources available, as well as safe and positive options for bystander intervention that may be carried out by individuals to prevent harm or intervene when there is a risk of sexual misconduct being inflicted on another person. Efforts will be made to ensure that educational programs are culturally relevant and inclusive of the diverse communities and identities found at UMES.

Employee training shall be provided to those involved in reporting, receiving reports, investigating, adjudicating and otherwise responding to charges of sexual misconduct at the University. Certain training may be mandated by applicable federal or state law. The appropriate training will be tailored to the

audience, and include reporting and response obligations, available resources, as well as information about how to prevent and identify sexual misconduct. Individuals specifically involved in implementing the University's sexual misconduct procedures will be trained on issues and applicable policies and procedures relating to sexual misconduct, as well as how to conduct the investigation and hearing process in a manner that protects the safety of all parties and promotes fairness and accountability.

CAMPUS SEXUAL ASSAULT CLIMATE SURVEY

On or before July 1, 2020, and at least every two (2) years thereafter, UMES 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 the Maryland Higher Education Commission (MHEC) and in accordance with USM requirements and requirements set forth in Md. Code Annotated, Education Article, Section 11-601(g).

TITLE IX COORDINATOR AND COMPLIANCE OVERSIGHT

The UMES Title IX Coordinator is responsible for coordinating UMES efforts to comply with and carry out its responsibilities under Title IX and this Policy:

Title IX Coordinator

Jason A. Casares

Office of Institutional Equity and Compliance

Early Childhood Research Center, Suite 1129

Princess Anne, MD 21853

Phone: (410) 651-6135

Email: jacasares@umes.edu

Email: titleIX@umes.edu

The Title IX Coordinator will be informed of all reports of sexual misconduct, and will oversee the University's review, investigation, and resolution of those reports to ensure the University's compliance with Title IX and related laws, and the effective implementation of this policy. The Title IX Coordinator will have adequate training on what constitutes sexual harassment, including sexual violence.

The Title IX Coordinator is:

- Responsible for oversight of the investigation and resolution of all reports of sexual harassment, sexual violence, stalking, and domestic and dating violence involving students, staff, and faculty;
- Knowledgeable and trained in University policies and procedures and relevant state and federal laws;
- Available to advise any individual, including a complainant, a respondent, or a third party, about the courses of action available at the University, both informally and formally, and in the community;
- Available to provide assistance to any University employee regarding how to respond appropriately to a report of sexual misconduct;
- Responsible for monitoring full compliance with all procedural requirements, record-keeping, and timeframes outlined in this policy;
- Responsible for overseeing training, prevention, and education efforts, and any reviews of climate and culture; and
- Responsible for providing the University aggregate, non-identifying information in regard to reports, investigations, resolutions, and sanctions.

Deputy Title IX Coordinators***For Student Affairs***

Louise Gaile
Office of Student Conduct
Student Services Center, Suite 2169
Princess Anne, MD 21853
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For Academic Affairs

Dr. Nancy Niemi
Office of the Provost and Academic Affairs
JT Williams Hall Suite 3111
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For Athletics

Shawnata Young
Athletics
William P. Hytche Athletic Center
Princess Anne, MD 21853
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Deputy Title IX Coordinators will work with the University Title IX Coordinator to ensure that the appropriate designated campus officials are involved in investigating and adjudicating complaints according to this Sexual Misconduct Policy and other applicable University policies and procedures.

Deputy Title IX Coordinators and senior University professionals in each department will work with the University Title IX Coordinator to ensure that adequate education, training, sanctions, and appropriate resources are available and provided in their respective departments. Student affairs professionals are expected to assist in educating the campus community and directing those who report an incident of sexual misconduct to the appropriate campus resources.

Title IX Team for UMES

The following individuals are designated as the Title IX team for UMES:

Team Chair:

- Title IX Coordinator and Fair Practices Officer/Director of Office of Institutional Equity and Compliance:
 - Jason A. Casares
Early Childhood Research Center Suite 1129, (410) 651-6135, jacasares@umes.edu

Team Members:

- Vice Provost for Academic Affairs
 - Dr. Latasha Wade
JT Williams Hall Suite 3111, (410) 651-6508, lwade@umes.edu
- Director of Housing and Residence Life
 - Mr. Courtney Thompson
Learning Resource Center Room 1, (410) 651-7707, cthompson@umes.edu

- Director of Student Conduct
 - Louise Gaile,
Student Services Center Room 2175, (410) 651-7850, ldgaile@umes.edu
- Chief of Police
 - Mark Tyler,
Office of Public Safety, (410) 651-6590, matyler1@umes.edu
- Director of Health Center
 - Sharon Grant,
Lida Brown Hall Room 101, (410) 651-6597, svgrant@umes.edu
- Director of Counseling
 - Kate Kent,
Student Development Center Room 2260, (410) 651-6452, kkent@umes.edu
- Title IX and EEO Investigator
 - Alexandra Ginta Martin,
Early Childhood Research Center Suite 1129, (410) 651-6135, agmartin1@umes.edu
- Associate Director of Prevention, Education, Training and Compliance
 - Cecilia Rivera,
Early Childhood Research Center Suite 1129, (410) 651-6135, cmrivera@umes.edu

General Statement of Nondiscrimination – Sex and Gender-Based Discrimination

Title IX of the Education Amendments of 1972, as amended, prohibits UMES from discriminating on the basis of sex in its education programs and activities. Inquiries concerning the application of Title IX may be referred to UMES Title IX Coordinator or the U.S. Department of Education, Office for Civil Rights, Wannamaker Building, 100 Penn Square Street East, Room 6300 Suite 515, Philadelphia, Pennsylvania 191047-3323; 215- 656-8541; <http://www2.ed.gov/about/offices/list/>

RESOURCE INFORMATION

The University will disseminate campus-specific information regarding available on and off campus resources through various methods including, the www.umes.edu/oie website, programing, and other relevant materials such as campus specific brochures. Resource information will include, but is not limited to:

- University and community psychological and counseling resources;
- University and community medical resources (including the availability of nurses trained in sexual assault response);
- Resources for non-U.S. citizens (visa, immigration, and translation assistance);
- How to report an incident of sexual misconduct to the University and local law enforcement;
- Available confidential employees and student advocates;
- Information and assistance regarding adjustments to academic housing, financial aid, obtaining no contact orders, and other needs on campus;
- Community resources such as legal assistance and obtaining protective orders.

SANCTIONS

Violations of this policy by an individual will be dealt with in accordance with applicable University policies and procedures, which may include disciplinary actions up to and including termination from the University. See the procedures outlined below for possible sanctions that may be imposed to address violations of this policy. When determining appropriate sanctions, the University may consider prior findings of misconduct. Violations of law will be addressed by law enforcement and may result in criminal penalties.

CONSENSUAL RELATIONSHIPS & PROFESSIONAL CONDUCT

In its commitment to foster an educational or work environment free from all forms of harassment and discriminatory behavior, UMES strongly discourages any romantic or sexual relationships between faculty and student, supervisor and subordinate employee, and any other relationship where a power differential exists between the parties. Even if consensual, these relationships are always a cause for concern including, but not limited to, the following:

- They may involve one person's exerting power over another;
- Conflict of interest issues may arise in evaluating a student or employee;
- There is a strong potential for Retaliation when a relationship ends;
- A third party may allege favoritism; and/or
- They undermine the professional interaction upon which faculty-student and supervisor-subordinate relationships should be based.

In particular, consensual sexual or romantic relationships that occur in the context of educational or employment supervision and evaluation may present potential conflicts of interest. Relationships in which one party maintains a supervisory or evaluative responsibility over the other also reflect an imbalance of power, leading to doubt as to whether such relationships are truly consensual.

Because of the potential conflicts of interest, persons involved in consensual sexual or romantic relationships with anyone over whom they have supervisory and/or evaluative responsibilities must inform their supervisor(s) of the relationship(s). Supervisory or evaluative responsibilities may be reassigned, as appropriate.

PROCEDURES FOR SEXUAL MISCONDUCT

IMMEDIATE ASSISTANCE

In an emergency or if you see a crime in progress, always call 911 immediately.

The campus shall provide, publicize and keep updated, information for immediate assistance, including contact information for emergency and medical assistance, counseling services, as well as local law enforcement. Information about ways to report anonymously or to speak to a confidential employee will also be provided for the campus community ([see www.umes.edu/OIE](http://www.umes.edu/OIE)).

The University will provide written information to anyone who reports to the University that they have experienced sexual misconduct, about:

- University procedures dealing with sexual misconduct, including to whom and how the alleged offense should be reported, as well as their rights and options;
- The importance of preserving evidence that may assist in proving the alleged criminal offense occurred, as well as how to preserve such evidence;
- Options about the involvement of law enforcement;
- Rights and University responsibilities with respect to orders of protection and how to obtain such orders; and
- Available campus and community resources.

This information will also be widely publicized on www.umes.edu/OIE

REPORTING AN INCIDENT

In an emergency or where immediate help is needed, call 911.

Anyone wishing to report an incident of sexual misconduct can do so using the following methods:

- Reporting directly to campus or local law enforcement if the incident involves sexual violence;
- Reporting directly to the student conduct office for the campus;
- Reporting directly to one of the Deputy Title IX Coordinators for the campus; or
- Reporting directly to the University Title IX Coordinator (see pg. 6).

All reports of sexual misconduct made to a Responsible Employee that are not initially reported to the Title IX Coordinator(s), will be shared with the University Title IX Coordinator in a timely manner, which is defined as 48 hours. In addition, if a report of sexual misconduct is not made initially to the University of Maryland Eastern Shore Police Department (UMESPD), and the information indicates it may be a crime reportable under the Clery Act, non-identifying information regarding the date, time, location, and nature of the crime will be shared with UMESPD for purposes of complying with the Clery Act. If the University and/or Deputy Title IX Coordinator(s) receive a report that indicates law enforcement should be informed and involved due to the potential threat to health and safety of an individual or the University community, they may also share the identifying information needed for appropriate response by UMESPD (*see Confidentiality and Privacy Section below*).

AMNESTY

The University strongly encourages students to report instances of sexual misconduct. Therefore, students who report an incident of sexual misconduct will not be disciplined by the University for any violations of the Code of Student Conduct related to their drug and/or alcohol consumption in connection with the reported incident of sexual misconduct.

RETALIATION

Protections against retaliation are critical to reducing the prevalence of sexual misconduct within the University community. Retaliation against anyone who has reported an incident of sexual misconduct, provided information, or participated in procedures or an investigation into a report of sexual misconduct, is prohibited by the University and will not be tolerated.

Acts of retaliation include intimidation, threats, and/or harassment, whether physical or communicated verbally or via written communication (including the use of e-mail, texts and social media), as well as adverse changes in work or academic environments or other adverse actions or threats. The University will take steps to prevent retaliation and will impose sanctions on anyone or any group who is found to have engaged in retaliation in violation of this policy. Concerns about potential retaliation in connection with a report of sexual misconduct should be reported to the University Title IX Coordinator.

GOOD FAITH REQUIREMENT

Reports or complaints of sexual misconduct must be made in good faith because they are so serious and have the potential to cause great harm if made without justification. Accordingly, it is a violation of the Policy and Procedure for an individual to make a complaint or report in bad faith or without justification. An individual found to have made a complaint or report in bad faith or without justification may be subject to disciplinary or other action.

ROLE OF A RESPONSIBLE EMPLOYEE TO REPORT AND RESPOND TO SEXUAL MISCONDUCT

The University encourages anyone who has experienced sexual misconduct to talk to someone about what happened, to ensure they are informed of the available support, resources, and applicable complaint processes and to allow the University to respond appropriately. The information below explains the obligations of certain employees to report information brought to their attention regarding incidents of sexual misconduct to the appropriate University officials.

Responsible Employees

Pursuant to Title IX, a “responsible employee” includes those University employees who have the authority to redress sexual misconduct, who have the duty to report incidents of sexual misconduct, or who a student could reasonably believe has this authority or duty.

The University’s responsible employees include, but are not limited to:

- All instructors, including full-time professors, adjuncts, lecturers, associate instructors (AIs), teaching assistants (TAs), and any others who offer instruction (whether in-person or online) or office hours to students;
- All advisors;
- All coaches, and other athletic staff who interact directly with students;
- All student affairs administrators;
- All residential hall staff;
- All employees who work in offices that interface with students; and
- All supervisors and University officials.

When an individual tells a responsible employee about an incident of sexual misconduct, that individual has the right to expect the University to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably. Therefore, Responsible Employees have an obligation to report the information as explained below, as well as assist the individual in seeking medical

attention and emergency response where appropriate, in understanding available resources on and off campus (see www.umes.edu/OIE), and in understanding their options in making a criminal complaint, as well as a complaint through the University's procedures set forth in this policy.

If the incident is an emergency or poses a serious and continuing threat, the responsible employee should first call 911 or campus police immediately. In all situations, a responsible employee must report to the Title IX Coordinator or a Deputy Title IX Coordinator. The responsible employee must report all relevant details of the alleged sexual misconduct that are known or reasonably known to them, or that have been shared with them, that the University will need to be aware of to determine what happened. This includes the names of the individual(s) affected and alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident. A responsible employee should not discuss or share any information related to the incident, including the individual's name, with anyone other than the University or Deputy Title IX Coordinators, and those directly involved in handling the University's response, unless they received the individual's prior consent or in the event of an emergency or existing threat to anyone's health and safety.

Supervisors may request a responsible employee to notify them if the responsible employee has made a report about an incident of sexual misconduct, however the supervisor may not require the responsible employee to share any details about the incident. Supervisors may contact the University Title IX Coordinator with any questions.

Responsible employees should make every effort to ensure that all individuals, including students, understand that the employee is legally obligated to make a report to the University Title IX Coordinator or a Deputy Title IX Coordinator in the event they are made aware of an incident of sexual misconduct.

In some instances, an individual who has experienced sexual misconduct may express a desire that the University not investigate the incident and/or not inform the individual accused. In those situations, the responsible employee must still report the information known to them, as required, but should also explain to the individual that the University will strongly consider the request, and will generally honor the request except in limited circumstances where the safety and well-being of the individual or the community outweighs the reasons for the request (*see Requests for No-University Action below*). In reporting the details of the incident to the Title IX Coordinator, the responsible employee should ensure they inform the Coordinator of the individual's request. Responsible employees who are also Campus Security Authorities (CSA) under the Clery Act, will satisfy their CSA reporting obligation by reporting incidents of sexual misconduct to the University Title IX Coordinator or Deputy Title IX Coordinator, who will ensure that the appropriate non-identifiable information is conveyed to UMESPD for Clery purposes.

If an individual has not yet shared information with a Responsible Employee regarding an incident of sexual misconduct, and the individual wishes to maintain anonymity, the Responsible Employee may refer them to a Confidential Employee or off-campus resource (*see Confidential Employees section below*). However, once a Responsible Employee has knowledge of an incident of sexual misconduct, they must report according to this policy.

ROLE OF LAW ENFORCEMENT

Any individual who has experienced sexual violence is encouraged to contact UMESPD or local law enforcement.

UMESPD responds to emergency situations on the UMES campus and typically communicates and works with the University Title IX Coordinator to assist in investigations and incident response, as well as to track statistics for Clery Act reporting.

Individuals with a possible criminal case who have not made their initial complaint via the police will be provided with information about how to file a complaint with law enforcement. Individuals may also request assistance from campus authorities in notifying law enforcement. Individuals may decide not to notify law enforcement authorities, and proceed with a University investigation.

A University investigation under the procedures outlined in this policy may be initiated and/or proceed simultaneously with a criminal case. The University will cooperate with law enforcement, and if requested by law enforcement, defer its fact gathering for a brief period during the evidence gathering stage of a criminal investigation. However, the University will not consider its investigation on hold pending a criminal prosecution or investigation and will continue to communicate with individuals and address the need for any interim measures regarding safety and well-being, and resume its own fact gathering as soon as permitted.

The determination by law enforcement whether or not to prosecute a respondent or the outcome of a criminal proceeding does not determine whether a violation of University policy has occurred. Records of University proceedings may be subpoenaed for a criminal prosecution.

In some instances, based on a heightened threat, or potential threat to the safety of the individual(s) involved, or the larger University community, university officials may determine it is necessary to make a third-party complaint to law enforcement, despite the individual's decision not to do so. In such instances, the University will attempt to inform the individual prior to making a third-party complaint.

CONFIDENTIALITY AND PRIVACY

Confidential Employees

Certain University employees – based on their own professional licensure and the nature of their role on campus – are available to speak with individuals about incidents of sexual misconduct and maintain the individual's desire for anonymity and absolute confidentiality. These confidential employees are exempt from the reporting requirements that apply to responsible employees (*see Responsible Employees section below*). Individuals who desire anonymity in discussing and seeking assistance about sexual misconduct should contact and/or be referred to a confidential employee.

The University's confidential employees include, but are not limited to:

- Licensed, professional mental health counselors working in that capacity, and those they supervise;
- Health care professionals and staff located in on-campus health care centers; and
- Any staff or specialists on a campus specifically designated as non-professional sexual assault advocates.

Note: Faculty, staff and other employees who are licensed mental health workers or are licensed medical workers, but who are not working in that capacity, such as faculty members in psychology, social work, nursing, etc., are not confidential employees under this policy. The University shall identify and publicize confidential employees. Any Confidential Employee who is not a licensed mental health counselor or pastoral counselor serving in those roles, must provide non-identifying aggregate information regarding any Clery crime known to them directly to Title IX Coordinator. See website at www.umes.edu/OIE for available confidential employees at the University.

Privacy

The University is committed to safeguarding the privacy of the parties in a manner consistent with the objective to effectively investigate and prevent incidents of sexual misconduct. In all cases, the University will share the parties' information and details of the allegation only with University officials, law enforcement personnel, and other individuals who have a legitimate administrative or legal reason to be so informed. Records will not be disclosed outside the University unless required by law or subpoena.

All individuals with knowledge of an alleged incident of sexual misconduct are expected to safeguard the privacy of those involved and should refrain from discussing the incident with anyone other than appropriate University officials and law enforcement.

Requests for No-University Action

If an individual discloses they have experienced an incident of sexual misconduct to a responsible employee, but requests that the University not investigate the particular incident, requests that no disciplinary action be taken, requests that the alleged perpetrator not be notified, or makes any similar request, the University will consider such request(s), and in general work to honor them. The responsible employee must still report the information to the designated officials, but also convey the individual's desired request(s). The University will weigh such request against its obligation to provide a safe, non-discriminatory environment for all students, including the individual who experienced the sexual misconduct. If the University determines that it is able to honor the individual's request(s), the individual should understand that the University's ability to meaningfully investigate the incident and/or respond appropriately may be limited. If, however, the University determines it must proceed under the circumstances, it will work to notify the individual in advance.

The University has designated the following individual(s) to evaluate an individual's request for no or limited action by the University in connection with a report of sexual misconduct: The Title IX and Deputy Title IX Coordinator(s), in consultation with relevant administrators on each campus and University legal counsel, where appropriate.

INVESTIGATION

Upon receipt of a report of sexual misconduct, the University will respond promptly to investigate and provide interim measures where appropriate. Procedures after a report of sexual misconduct will follow the steps listed below depending on whether the respondent is a student or employee. Employees who are students may be subject to procedures for students or employees, or both, at the sole discretion of the University. Investigation of the alleged misconduct shall be conducted by the University Title IX Coordinator, a Title IX investigator, or another appropriate designee. Information for the investigation may be provided by the parties, witnesses identified by any party, or the University. Information related to prior sexual history of the parties will be prohibited, except in very limited circumstances regarding prior sexual history between the parties where such information may be relevant to the issue of consent. However, consent will not be assumed based solely on evidence of any prior sexual history.

Prior or subsequent conduct of the respondent may be considered in determining pattern, knowledge, intent, or motive. For example, evidence of a pattern of prohibited conduct by the respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Policy violation, may be deemed relevant to the determination of responsibility for the prohibited conduct under investigation. The determination of the relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicated a pattern of similar prohibited conduct.

All investigators shall have the appropriate required and ongoing training on conducting sexual misconduct investigations, issues related to sexual misconduct and applicable University policies and procedures. All investigations are coordinated through the Office of Institutional Equity and Compliance.

If the person identified as having engaged in sexual misconduct is not a student or employee of the University, the University shall take all appropriate measures to determine information regarding the individual, what occurred, whether another entity needs to be contacted to join in or assume an investigation (e.g. another institution of higher education), and to provide assistance in notifying the proper law enforcement authorities. The University will also provide interim and remedial measures, to the extent possible, to protect the reporting individual and eliminate any hostile environment. If upon investigation, it is determined that an individual is responsible for sexual misconduct and has a continuing relationship with the University, the University shall consider appropriate sanctions to prevent further harm and eliminate the hostile environment.

The University reserves the right to investigate circumstances that may involve sexual misconduct in situations where no complaint, formal or informal, has been filed. The University reserves the right to reopen a case previously considered closed in the event of new information or other appropriate circumstances.

INTERIM AND REMEDIAL MEASURES

Upon receiving a report or notice of alleged sexual misconduct, the University will provide appropriate and necessary interim measures to the complainant. These protective and supportive measures may vary depending on the individual's needs and the specific circumstances and could include no contact orders; assistance in changing academic, living, transportation, and/or work situations; counseling services; victim advocacy services; and assistance in obtaining protective orders. Interim measures may also include suspension of the respondent pending completion of the investigation, depending on the nature of the allegations.

Upon a finding of responsibility for sexual misconduct following the University's adjudication of the complaint, the University will take any additional and necessary remedial action with respect to the complainant and other members of the community, as well as the appropriate disciplinary action with respect to the person found responsible.

Certain support and protective measures, as well as resources may also be available to an individual who has experienced sexual misconduct, regardless of whether they move forward with their complaint, depending on the individual's campus, the individual's needs and the specific circumstances.

RESOURCES & SERVICES OFFERED TO STUDENTS

Medical Services. In cases of emergencies, dial 911. Victims of sexual violence or any unwanted touching should seek medical advice in case of exposure to sexually transmitted diseases (STDs) or pregnancy concerns.

- **Peninsula Regional Medical Center: 410-546-6400**
 - At Peninsula Regional Medical Center (PRMC), a Sexual Assault Nurse Examiner (S.A.N.E.) can perform a sexual abuse evidentiary examination in order to preserve evidence. An evidentiary exam is free. Receiving an evidentiary examination does not mean that a victim must make a formal report to the University or to law enforcement.

- **Student Health at Charles Drew Infirmary: 410-651-6597**
 - The UMES Student Health Center can provide advice about STDs or pregnancy concerns. A Confidential Notification must be completed when sexual misconduct is reported. This is only a notification that an incident has occurred; the victim's personal identifying information will remain confidential.

Law Enforcement. In cases of emergencies, dial 911. Victims of sexual misconduct should contact the local law enforcement agency. A law enforcement agent can assist a victim in determining whether a crime has been committed. Law enforcement agencies will produce a criminal report and must dispense a complaint to the University's Title IX Coordinator.

- **UMES Department of Public Safety: 410-651-3300**
 - The Department of Public Safety is committed to ensuring that students who report sexual misconduct receive comprehensive care:
 - If a student is involved, the officer must contact a Sexual Misconduct Victim Advocate to assist the student in every step of the process.
 - According to a complainant's wishes,
 1. The advocate may also be present during any officer interviews.
 2. Accompany the student to the hospital if the student wishes; and/or
 3. Officer shall contact the Office of Institutional Equity and Compliance if the student wishes to make a complaint under University processes or utilize the resources of that office, including making a request for accommodations or other support.
- **Princess Anne Police Department: 410-651-1822**
 - The Princess Anne Police Department provides police services on a seven-day, twenty-four hour basis.

Counseling Services. Counselors can assist students in understanding their rights and reporting options. The University encourages all students who believe they may have been victims of sexual misconduct to contact a Counseling Service. They can help a student identify other sources of emotional and physical support. Anything discussed with a counselor will be kept confidential unless written authorization to disclose is provided by the victim.

- **Sexual Misconduct Victim Advocate: 410-651-7706**
 - Victim Advocates are trained to assist victims of sexual misconduct and will speak with the student confidentially as the student considers options. Advocates are available to assist students twenty-four hours a day during academic sessions.
- **University Counseling Services Center: 410-651-6449**
 - The UMES Counseling Services Center (www.umes.edu/CounselingCenter) staff are trained, thinking, feeling, and caring individuals who have developed the capacity to share their knowledge and skills with those who need help. Services include individual counseling, group counseling, couples counseling, psychiatric services, referral services, and consultation;
 - Though conversations with counselors are confidential, a Confidential Notification must be completed when sexual misconduct that has occurred on University property or at a University sponsored activity is reported. This is only a notification that an incident has occurred; the individual's personal identifying information will remain confidential.

- **Life Crisis Center: 410-749-4357**
 - The Life Crisis Center's (www.lifecrisiscenter.org) services are available at no charge to victims of domestic violence, rape, sexual assault, and child abuse. Their toll free hotline operates 24 hours a day for anyone needing crisis assistance or referral information.
- **National Suicide Prevention Lifeline: 800-273-TALK(8255)**
 - The National Suicide Prevention Lifeline (www.suicidepreventionlifeline.org) is a 24-hour, toll free, confidential suicide prevention hotline available to anyone in suicidal crisis or emotional distress. By dialing 1-800-273-TALK (8255), the call is routed to the nearest crisis center in a national network of more than 150 crisis centers. The Lifeline's national network of local crisis centers provide crisis counseling and mental health referrals day and night.
- **National Sexual Assault Hotline: 800-656-HOPE(4673)**
 - RAINN (Rape, Abuse & Incest National Network) is the nation's largest anti-sexual violence organization and was named one of "America's 100 Best Charities" by Worth magazine. RAINN created and operates the National Sexual Assault Hotline (800.656.HOPE and online rainn.org) in partnership with more than 1,100 local sexual assault service providers across the country and operates the DoD Safe Helpline_ for the Department of Defense. RAINN also carries out programs to prevent sexual violence, help victims and ensure that rapists are brought to justice.
- **Gay, Lesbian, Bisexual & Transgender National Hotline: 888-THE-GLNH(843-4564)**
 - The Gay, Lesbian, Bisexual and Transgender (GLBT) National Help Center (glnh.org) provides vital peer support, community connections and resource information to people with questions regarding sexual orientation and/or gender identity. GLBT helps both youth and adults with coming-out issues, safer-sex information, school bullying, family concerns, relationship problems and a lot more.

SUMMARY OF RIGHTS OF THE COMPLAINANT AND RESPONDENT IN SEXUAL MISCONDUCT PROCEDURES

The rights of the parties to a sexual misconduct proceeding include:

1. To be fully informed of University policies and procedures as well as the nature and extent of all alleged violations contained within the allegation.
2. To be treated with respect by University officials.
3. To have an advisor present during a University sexual misconduct proceeding, investigation meeting, or related meeting. The role of the advisor will be limited to being present only; they will not be allowed to speak during any University sexual misconduct proceeding, investigation meeting, or related meeting.
4. Adequate, reliable, and impartial investigation as well as appropriate resolution of all reports of sexual misconduct.
5. To be informed by the University of options to notify proper law enforcement authorities including on-campus and local police, and the option to be assisted by campus authorities in notifying proper law enforcement, if the individual chooses.
6. To be notified of available counseling, mental health, academic, legal and other support services, both at the University and in the community.
7. To have allegations investigated by individuals who are properly trained to investigate and resolve allegations of sexual misconduct.

8. Equitable participation in the investigation and disciplinary process, including the opportunity to identify witnesses and other appropriate evidence.
9. The use of the preponderance of the evidence standard (more likely than not) in determining responsibility.
10. The right to appeal as set forth in these procedures.

PROCEDURES FOR RESPONDING TO INCIDENTS INVOLVING ALLEGATIONS OF STUDENT SEXUAL MISCONDUCT

The University will promptly respond to all reports of sexual misconduct alleged against a University student following the procedures outlined in this policy. Allegations of sexual misconduct by students will be addressed by the Sexual Misconduct Policy and the Code of Student Conduct (“Student Code”). Students may be charged according to specific code violations under the Student Code, which will reference the Sexual Misconduct Policy.

Any individual reporting they have been a victim of sexual violence will be informed of how to, and provided assistance in making a criminal complaint with the appropriate law enforcement agency. The pursuit of criminal charges may be in addition to (or instead of) pursuing cases through the University process. Individuals who identify as victims/survivors and all members of the University of Maryland Eastern Shore community are also encouraged to visit the website at www.umes.edu/OIE for more information on reporting, campus resources and services available on their campus.

Throughout the process, the parties will have equal opportunities to present information, have advisors present, and pursue an appeal, if applicable. The University will have as a priority the interests of all parties involved, in regard to fairness, dignity, privacy, and due process.

The investigation and determination of responsibility will generally be concluded within 60 days of the report, absent special circumstances.

1. **Investigation:** Upon receipt of a report of sexual misconduct by a victim/survivor (hereinafter referred to as “complainant”) or third party, and following an initial assessment to determine whether it falls within the scope of the Sexual Misconduct Policy and rises to the level of an allegation of sexual misconduct, the University will take immediate and appropriate steps to investigate the incident. If the complainant requests confidentiality or asks that the complaint not be pursued, the University will take all reasonable steps to investigate and respond to the incident consistent with those requests, keeping in mind that the University must weigh such requests against its obligation to provide a safe, non-discriminatory environment for all students, including the complainant.
 - a. If sexual misconduct proceedings are initiated, the Investigator(s) will notify the complainant and the student alleged to have engaged in sexual misconduct (hereinafter referred to as “respondent”). The respondent will be provided a date by which an appointment must be made to discuss the matter. The respondent shall be informed of the allegations made against them and shall be provided the opportunity to respond. The respondent is expected to participate in the investigation and all related procedures, including the Sexual Misconduct Hearing.
 - b. The investigation may include, but is not limited to, interviews with the complainant, the respondent, and other witnesses identified as having information relevant to the allegations made, as well as the examination of written statements by the parties, relevant documents, and other relevant information. Information for the investigation may be provided by complainants, respondents, witnesses identified by any party, or the University. Any person believed to have information relevant to an investigation may be contacted and requested to make an appointment to discuss the matter. The University shall determine what information and evidence will be included in the Investigation File.
 - c. Failure to comply with a request to make and/or keep an appointment related to an investigation may result in a disciplinary hold being placed on a student’s account and/or the initiation of student conduct charges for failure to comply.

- d. All members of the University are expected to cooperate with the investigative process. Failure to do so may result in disciplinary measures pursuant to applicable University policy and procedure.
 - e. Following their investigation, the Investigator will provide their Preliminary Investigation Report to the parties. At that time, the parties will be provided access to the Investigation File. The parties will be provided 10 calendar days to review the Preliminary Investigation Report and the Investigation File and provide any clarifying information to the Investigator. This period of 10 days will be the final opportunity for parties to submit any additional information to the Investigator.
 - f. At the conclusion of the 10-day period, the Investigator will review the information submitted by either party and determine whether and to what extent to incorporate such information into a Final Investigation Report.
 - g. At that time, the Investigator will determine the appropriate charge(s), if any, under the Sexual Misconduct Policy and the Student Code to be placed on the respondent and include the charge(s) in their Final Investigation Report. If the Investigator places a charge(s), the Final Investigation Report will be submitted to the hearing panel for the determination of responsibility, and the parties will be provided the Final Investigation Report and notified of next steps of the sexual misconduct process. If the Investigator determines that there is insufficient evidence to support placing a charge, the parties will be provided the Final Investigation Report and notified that no charges will be placed and the case has been closed.
- 2. Acceptance of Responsibility:**
- a. In cases where the respondent expresses a willingness to accept responsibility for any or all charges in a case, the respondent will be offered the opportunity to waive the right to a formal hearing as to the specific charge(s) and all related procedural guarantees, and agree to receive a sanction from the designated student affairs conduct officer. In such situations, the parties will each be provided the opportunity to submit a written statement to the conduct officer for consideration in determining appropriate sanctions.
 - b. The conduct officer shall consider only the parties' written statements regarding sanctions, the relevant facts from the investigation, and past conduct history of the respondent (if applicable). In such cases, the right to appeal will be limited to an appeal on the grounds that the sanction is grossly disproportionate to the violation(s) committed, in light of all relevant aggravating and mitigating factors, and in consideration of applicable University guidelines.
- 3. Alternative Resolution Options:**
- a. In appropriate cases, the University may pursue alternative resolution with the consent of all parties at any point in the investigation process. Alternative resolution options may include, but are not limited to, mediation, development action plans, voluntary resolutions, and/or appropriate sanctions.
 - b. Under any alternative resolution, the complainant will not be required to resolve the problem directly with the respondent, unless agreed upon by both parties. All parties must be notified of the right to end the alternative resolution process at any time, and begin the formal process. Mediation may not be used in cases involving any sexual violence. The Investigator shall document the outcome of any alternative resolution and share with the parties.

4. Sexual Misconduct Hearing:

- a. A hearing panel will be assembled for the sexual misconduct hearing to make a determination of respondent's responsibility as to the specific charge(s) set forth in the Final Investigation Report.
- b. The hearing panel will be composed of three staff, faculty, and/or student community members of the University. Hearing panel members will be drawn from the pool of staff, faculty, and/or student community members who have completed the University's required annual training on issues related to sexual misconduct and University policies and procedures. At a minimum, at least one panel member shall be a student affairs administrator.
- c. The sexual misconduct hearing is closed. However, the complainant and respondent may each select one advisor of their choice and at their expense to accompany them at any point in the disciplinary process. Advisors are limited to an advisory role and may not participate or speak for the parties.
- d. Upon review of the Final Investigation Report, the hearing panel will determine witnesses who may be called, if any, to participate in the hearing.
- e. Procedures for a Sexual Misconduct Hearing
 - i. The Chair of the hearing panel shall review the charge(s) placed against the respondent and the specific facts alleged. The respondent may, but need not, respond to allegations.
 - ii. Both the complainant and the respondent will have equal opportunity to provide a statement to the hearing panel.
 - iii. No one other than the hearing panel members, the complainant, and the respondent may pose questions during the hearing. The complainant and respondent may not directly question each other, but may submit questions to the Chair, to be asked of the other party. The Chair or other panel members will review questions prior to posing to the other party to prevent questioning that is not permitted under these proceedings.
 - iv. The sexual misconduct hearing is recorded. Deliberations by the panel, following the hearing, are not recorded.
 - v. If the respondent fails to appear at the sexual misconduct hearing, the hearing may proceed without their participation. The respondent may explain the failure to appear in writing to the University within two business days of the scheduled hearing. Written documentation supporting the cause of absence must be included. Within three (3) business days after receiving the respondent's letter, the University will notify the respondent and the complainant whether the failure to appear was excused, and if so the hearing may be rescheduled. The failure to appear will only be excused due to extraordinary circumstances.
 - vi. If the respondent failed to appear and such failure was not excused, the respondent's right to appeal the finding and any sanction(s) imposed will be automatically forfeited, and the outcome reached in absentia will go into effect. The respondent shall not lose their right to appeal in the event the hearing panel's finding includes a sanction of expulsion from University housing, suspension from the University, or expulsion from the University.
- f. Decision & Sanctions
 - i. At the conclusion of a hearing, the panel shall deliberate without the parties present to determine responsibility for the specific charge(s) based on the evidence, and sanctions if applicable.
 - ii. If, after deliberations, the hearing panel determines that the information contained in the Final Investigative Report and gathered during the hearing, does not support by a preponderance of the evidence (more likely than not) that the

- respondent is responsible for a violation of the Sexual Misconduct Policy and the Student Code, the hearing panel will notify both the respondent and the complainant by means of a written notice. The complainant and/or respondent may request an appeal (see section 5a.).
- iii. If, after deliberations, the hearing panel determines that the information contained in the Final Investigative Report and gathered during the hearing, does support by a preponderance of the evidence (more likely than not) that the respondent is responsible for a violation of the Sexual Misconduct Policy and the Student Code, the hearing panel will notify both the respondent and the complainant and will assign appropriate sanctions by means of a written notice. The respondent and/or the complainant may request an appeal (see section 5a.).
 - iv. Possible sanctions for cases in which students are found in violation of Sexual Misconduct Policy and the Student Code for acts of sexual misconduct include, but are not limited to formal warnings, behavioral assessment and/or counseling, required educational training, disciplinary probation, suspension, and/or permanent expulsion.
5. **Appeal:** The respondent or the complainant may appeal the decision of the sexual misconduct hearing panel to the Senior Student Affairs Administrator, or their designee. To initiate an appeal, respondent/complainant must send written notice of appeal to the designated official. The written notice must include the basis for seeking the appeal and include information to support such basis (See Section 5b.)
- a. **Timing:** The notice of appeal must be filed no later than five (5) calendar days after the date the written decision of the sexual misconduct hearing panel is sent. If an appeal is submitted by either party, the underlying decision and any corresponding sanction will be held in abeyance until the final notice of the appeal outcome. During this time, any interim measures in place will remain in effect (e.g., no contact order, no trespass). If no written request for an appeal is received by the University within the time specified, the decision of the hearing panel and any sanction(s) imposed will be final and in effect.
 - b. **Basis for Appeal:** The Senior Student Affairs Administrator will have the sole discretion in determining whether the basis for appeal has been met and whether the appeal can move forward. An appeal must be based on one of the following criteria:
 - i. Significant procedural error that reasonably would have affected the outcome of the student's case.
 - ii. The sanction imposed is grossly disproportionate to the violation(s) committed, in light of all relevant aggravating and mitigating factors, and in consideration of applicable University guidelines.
 - c. **Decision and Sanction:** If the basis for appeal has been met, the Senior Student Affairs Administrator will review the written appeal and the pertinent part of the sexual misconduct hearing panel record only. The Senior Student Affairs Administrator will not consider new evidence or information that is not a part of that record. The Senior Student Affairs Administrator must render a decision within 10 (ten) calendar days of receipt of the appeal and may take any of the following actions:
 - i. Affirm the original decision regarding responsibility.
 - ii. Affirm the original decision concerning the disciplinary sanction/s to be imposed.
 - iii. Set aside the original decision regarding responsibility and impose a new decision.
 - iv. Set aside the original decision regarding responsibility and order that a new sexual misconduct hearing be held before a new hearing panel.
 - v. Set aside the original decision concerning the disciplinary sanction/s to be imposed and impose a different sanction or set of sanctions.

- d. The Senior Student Affairs Administrator will notify the respondent and the complainant, in writing, of their decision and will initiate the necessary procedures to effectuate the decision.
 - e. The decision of the Senior Student Affairs Administrator or their designee is final and there will be no further appeals.
6. **Notice:** The complainant and the respondent will be provided written notice of the outcome of the sexual misconduct hearing, the appeals process, and the appeal decision, if applicable. Written notice may be provided electronically through University of Maryland Eastern Shore email accounts.
7. **NOTE:**
 - Just as students with disabilities may be eligible for accommodations in their classes, accommodations may be available for these procedures as well. Students with disabilities requesting accommodations and services under these procedures will need to present a current accommodation verification letter from their campus disability services office before accommodations can be considered and provided.
 - In appropriate circumstances, the University may utilize language translation services to assist in the investigation and/or hearing proceedings.
 - In the event there is a civil protective order in place that precludes the University from conducting a hearing as outlined in the student procedures, the University may use an alternative process that will be communicated to both parties.

PROCEDURES FOR RESPONDING TO INCIDENTS INVOLVING ALLEGATIONS OF FACULTY OR STAFF SEXUAL MISCONDUCT

The University will promptly respond to all complaints of sexual misconduct alleged against a University employee. Any individual reporting that they have been a victim of sexual violence will be informed of how to, and provided assistance in, making a criminal complaint with the appropriate law enforcement agency. Individuals who identify as victims/survivors and all members of the University of Maryland Eastern Shore community are also encouraged to visit the Office of Institutional Equity and Compliance website at www.umes.edu/OIE for more information on reporting, campus resources and services available on their campus.

All parties will have equal opportunities to present information, have advisors present, and pursue an appeal, if applicable. All procedures, excluding any appeal, should be completed within 60 days, absent any special circumstances.

Throughout this process, the University will have as a priority, the interests of all parties involved, in regard to fairness, dignity, privacy, and due process. Students reporting sexual misconduct against an employee will be provided interim and remedial measures as described in this policy, where appropriate and necessary.

1. **Investigation:** OIE conducts an initial review of the report to determine whether (i) the University has jurisdiction over the alleged misconduct and/or Responding Party and (ii) the alleged misconduct may constitute a violation of the Policy. If the University has jurisdiction and the misconduct may constitute a violation, OIE may conduct an Investigation.

An Investigation is an impartial, fact-gathering process. It is intended to provide the parties an opportunity to share their perspectives and identify information they believe relevant to the allegations. The Investigator interviews the parties and/or witnesses separately. They also gather physical evidence, such as documents, communications (including correspondence, email, text messages, social media, or other digital information), recordings (including audio and video), and other records, as appropriate and available.

a. Notice of Investigation

Prior to commencing any Investigation, the Title IX Coordinator or designee will provide a Notice of Investigation to both parties. This notice should include information which reasonably informs the parties of the “who, what, when, and where” of the alleged misconduct to the extent they are known. Such information generally includes, for example, the names of the parties; date, time, and location of the incident; and a description of the nature of the alleged misconduct.

The Notice of Investigation also informs the parties of their rights under the Policy and these Procedures. They each have a due process right to:

- i. A prompt, thorough, and impartial investigation, that is kept private to the extent practicable;
- ii. A meaningful opportunity to be heard, including a chance to identify relevant witnesses and evidence;
- iii. An opportunity to review and comment upon a preliminary investigatory summary (this document should include a summary of the statements and evidence shared by both parties as well as the names of and summaries of information provided by any witnesses);

- iv. A notice, in writing, of the outcome of any investigatory or disciplinary proceeding in which Sexual Misconduct is alleged, the procedure for appealing the finding and/or sanction rendered by the University; and any final result of the disciplinary process;
- v. An opportunity to have an Advisor attend meetings associated with a report of Sexual Misconduct as provided in the Policy; and
- vi. The ability to appeal any finding and/or sanctions.

The Notice of Investigation also informs the parties of their right to attend (separately) a meeting with a University-appointed Investigator. At this meeting, the parties may ask questions and learn more about the Investigation and associated adjudication processes. When a party does not attend a meeting with OIE or the Investigator, the University may proceed with an Investigation.

2. Role of the Investigator

The Title IX Coordinator will designate an Investigator(s) to conduct a prompt, thorough, fair, and impartial investigation. An Investigator reviews the facts, conducts interviews with the parties and witnesses, collects relevant evidence, and prepares reports. In addition, the Investigator makes a determination whether the Responding Party is responsible for a Policy violation.

Investigators will interview and receive evidence from the parties and witnesses. Evidence is relevant when a reasonable person would likely accept the information as having probative value about the underlying allegations. An Investigator may exercise discretion in not interviewing a witness or collecting a piece of evidence that is reasonably likely to lack relevance to the Investigation.

3. Special Considerations

Information related to the prior sexual history of either party is generally not relevant to the determination of a Policy violation. Accordingly, the University will not use an individual's sexual history for purposes of illustrating their character or reputation. However, prior sexual history between the parties may be relevant in very limited circumstances. For example, where there was a prior or ongoing consensual relationship between the parties and where consent is at issue, evidence as to the parties' prior sexual history may be relevant to assess the manner and nature of communications between the parties and whether consent occurred. The Investigator will determine the relevance of prior sexual history and inform the parties if information about the parties' prior sexual history is deemed relevant.

At the OIE's discretion, multiple reports may be consolidated in one investigation if the information related to each incident is relevant in reaching a determination. Matters may be consolidated where they involve multiple complainants, multiple respondents, or related conduct involving the same parties, provided that it does not delay the prompt investigation and resolution of complaints.

4. Preliminary Investigative Report

At or near the conclusion of the Investigation, the Investigator will draft a written investigation report summarizing the information gathered (e.g., the "who, what, when, and where"). This report will also synthesize the areas of agreement and disagreement between the parties, witnesses, and/or other evidence.

Each party receives a reasonable opportunity to review and respond to the Preliminary Investigative Report. Upon receipt of notice to review the Preliminary Investigative Report, a party has three (3) business days to schedule an appointment to review that document. Except in extraordinary circumstances, the parties should provide their comments, additional information (including new evidence), and/or questions (about witnesses, evidence, etc.) to the Investigator within three (3) business days after their appointment. Evidence not submitted at this time may not be considered.

5. Final Investigative Report

After receiving input from the parties regarding the Preliminary Investigative Report, the Investigators will create a Final Investigative Report and Decision. The parties may request an opportunity to review this document at OIE.

Remedial or Protective Interventions for Reporting Party

As appropriate, upon completion of an investigation and, if applicable, issuance of sanctions, the Title IX Coordinator, in consultation with appropriate University departments, will identify reasonable short-term and/or long-term remedies to address the effects of the conduct on the Reporting Party, prevent its reoccurrence, restore the Reporting Party's safety and well-being, and address the effects of this conduct in the educational workplace.

Appeals

Both parties have the right to appeal OIE's finding. Such appeals are heard consistent with these Procedures and other applicable policies and procedures governing discipline for serious misconduct. Faculty appeals will be addressed by the Provost and Vice President for Academic Affairs. Staff appeals will be addressed by the corresponding Vice President of a respective area. The appeal is not a rehearing but rather a written appeal (see below).

a. Grounds for Appeal

A party may appeal an investigator's finding of responsibility for a violation of Policy on the following grounds:

- i. Significant procedural error that reasonably would have affected the outcome of the case.
- ii. The sanction imposed is grossly disproportionate to the violation(s) committed, in light of all relevant aggravating and mitigating factors, and in consideration of applicable University guidelines.

b. Appeal Timeline

A party must submit their appeal in writing within five (5) business days of the finding. Failure to appeal within the allotted time will render the original decision final.

If an appeal is received by one party, the other party will be notified of the appeal submitted, will be able to review the written appeal and any supporting documentation submitted by the other party, and will have an opportunity to submit a written response to the appeal within five (5) business days of the notification of the receipt of an appeal.

c. Appeal Format

All requests for appeals must be submitted in writing to OIE and those appeals will be forwarded to the appropriate party for review.

Appeal Requests Can be Sent:
Office of Institutional Equity and Compliance
Early Childhood Research Center Suite 1237
Princess Anne, MD 21853
titleIX@umes.edu

The appeal must specifically state the basis for appeal and include relevant supporting documentation. The party appealing should address the central issue of the appeal, as irrelevant information will not be considered. If the appeal is a response to the other party's appeal, the appeal should act as a response, either in support or in opposition, to the central issues of the other party's appeal.

Decisions regarding appeals are typically made within ten (10) business days. The Respondent and the Complainant will receive the decision of the appeal in writing. All decisions made by the appellate body are final.

Final Outcome

After the appeal process has concluded (or when the time for an appeal has passed with no appeal submitted, whichever is later), the Office of Institutional Equity and Compliance will promptly notify the Reporting and Responding Parties, in writing, of the final outcome of the Sexual Misconduct complaint.

Records Retention

OIE will maintain records of all reports/complaints, initial reviews, Interim Measures, Investigations, findings, and appeals under the Policy. Human Resources and/or the Office of the Provost will maintain disciplinary records for all cases that result in a finding of a Policy violation. All records are maintained consistent with University policy and state and federal law regarding student records retention.