

## **VI-1.60 UMCES Policy and Procedure on Sexual Misconduct**

**Approved by the President – December 23, 2014; Amended and Approved on an interim basis by the President, August 14, 2020.**

### **I. Purpose and Scope**

This Policy and the accompanying procedures are established as the formal implementation of USM VI-1.60 Policy on Sexual Misconduct. The University of Maryland Center for Environmental Science (UMCES) is committed to providing a working and learning environment free from Sexual Misconduct, including sexual and gender-based harassment, sexual violence, dating violence, domestic violence, sexual exploitation, and sexual intimidation. UMCES prohibits and will not tolerate Sexual Misconduct. Sexual Misconduct is a form of sex discrimination prohibited by state and federal laws, including Title IX of the Education Amendments of 1972 as amended (“Title IX”) and Title VII of the Civil Rights Act of 1964, and may also constitute criminal activity.

UMCES endeavors to foster a climate free from Sexual Harassment, Other Sexual Misconduct and Retaliation. UMCES accomplishes this through training, education, prevention programs, through procedures that promote prompt reporting, prohibit retaliation, and provide for timely, fair, and impartial investigation and resolution of Sexual Harassment, Other Sexual Harassment and Retaliation cases in a manner that eliminates the conduct, prevents its recurrence, and addresses its effects. All UMCES community members are subject to this policy, regardless of sex, sexual orientation, gender identity, or gender expression. This includes all students, faculty, and staff of UMCES, as well as third parties and contractors under UMCES control. This Policy applies to Sexual Harassment, Other Sexual Misconduct and Retaliation in connection with any UMCES laboratory, office, education program, or activity, including said conduct (1) in any UMCES facility or on any UMCES property; (2) in connection with any UMCES or UMCES-sponsored, recognized, or approved program, visit or activity, regardless of location (including field work and assignments on vessels); (3) that impedes equal access to any UMCES education program or activity or adversely impacts the employment of a member of the UMCES community; or (4) that otherwise threatens the health or safety of a member of the UMCES community. Nothing in this policy is intended to supersede or conflict with any federal compliance obligation.

### **II. Applicability**

This Policy prohibits Sexual Harassment, Other Sexual Misconduct, and Retaliation. This Prohibited Conduct may be a form of sex discrimination prohibited by federal and state discrimination laws, including Title IX of the Education Amendments of 1972 (Title IX) and Title VII of the Civil Rights Act (Title VII).

This Policy addresses the University’s obligations under Title IX. Title IX provides, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Federal regulations implementing Title IX require that the University follow certain procedures when the University obtains Actual Knowledge of Sexual Harassment in its Education Program or Activity against a person in the United States.

This Policy also addresses allegations of Other Sexual Misconduct, which includes Sexual Harassment that occurred against a person outside of the United States or not within an Education Program or Activity; Sexual Coercion; Sexual Exploitation; Sexual Intimidation; Attempted Sexual Assault; and Other Sex-based Offenses. Retaliation is also addressed.



This Policy applies to all members of the University community, including students, faculty, and staff. It also applies to contractors and other third parties who are engaged in any University Education Program or Activity, or who are otherwise interacting with the University, including, but not limited to volunteers, vendors, guests, and visitors. All University members are prohibited from engaging in, or assisting or abetting another's engagement in Sexual Harassment, Other Sexual Misconduct, or Retaliation.

### III. Definitions

For purposes of this Policy, the following definitions apply.

- A. Actual Knowledge** means notice of Sexual Harassment or allegations of Sexual Harassment to the Title IX Officer or any University official who has authority to institute corrective measures on behalf of the University.
- B. Advisor** means a person chosen by a Party to provide advice and consultation to that Party, in accordance with this Policy and Procedures. An Advisor may be an attorney or another individual. An Advisor cannot be a witness or provide evidence in a case. A Party's Advisor also conducts cross-examination on behalf of that Party at a Hearing, if applicable, in accordance with this Policy and Procedures. An Advisor shall not be an active participant or speak on behalf of a Party except for the purpose of providing cross-examination at a Hearing. If a Party does not have an Advisor, the University will provide without fee or charge to that Party, an Advisor of the University's choice, to conduct cross-examination on behalf of that Party; an Advisor appointed by the University acts in a confidential capacity on behalf of the Party and is not otherwise involved in the proceedings.
- C. Appellate Hearing Officer** means an individual designated to review decisions concerning responsibility and sanctions, based on the Respondent's status as a student, staff member, or faculty member. Appellate Hearing Officers shall have had no previous involvement with the substance of the Formal Complaint.
- D. Complainant** means the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.
- E. Consent** means a knowing, voluntary, and affirmatively communicated willingness to mutually participate in a particular sexual activity or behavior. It must be given by a person with the ability and capacity to exercise free will and make a rational and reasonable judgment. Consent may be expressed either by affirmative words or actions, as long as those words or actions create a mutually understandable permission regarding the conditions of sexual activity. Consent may be withdrawn at any time. Consent cannot be obtained by force, threat, coercion, fraud, manipulation, reasonable fear of injury, intimidation, or through the use of one's mental or physical helplessness or incapacity. Consent cannot be implied based upon the mere fact of a previous consensual dating or sexual relationship. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. In order to give consent, one must be of legal age for sexual consent and be both sober and conscious enough to understand what is being agreed to.
- F. Education Program or Activity** means all of the University's operations (including but not limited to employment); locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the Prohibited Conduct occurs; and also includes any building owned or controlled by a student organization that is officially recognized by the University.



- G. Formal Complaint** means a Document filed by a Complainant or signed by the Title IX Officer alleging Prohibited Conduct against a Respondent and requesting that the University proceed with the resolution process. A Formal Complaint may be filed with the Title IX Officer in person, by mail, by e-mail, or any additional method designated by the University in accordance with the Procedures.
- i. 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 Officer signs a Formal Complaint, the Title IX Officer is not a Complainant or otherwise a Party.
- H. Hearing** means a live, formal proceeding attended by the Parties in which evidence is presented, witnesses are heard, and cross-examination occurs, prior to the Hearing Officer's decision concerning responsibility and Sanctions, if applicable.
- I. Hearing Officer** means an individual designated to preside over the Hearing and has decision-making and sanctioning authority within the adjudication process.
- J. Incapacitated** means an individual's decision-making ability is impaired such that the individual lacks the capacity to understand the "who, what, where, why, or how" of their sexual interaction. Incapacitation may result from sleep, unconsciousness, intermittent consciousness, physical restraint, or any other state where the individual is unaware that sexual contact is occurring. Incapacitation may also exist because of a temporary or permanent mental or developmental disability that impairs the ability to Consent to sexual contact. Alcohol or drug use is one of the primary causes of Incapacitation. Where alcohol or drug use is involved, Incapacitation is a state beyond intoxication, impairment in judgment, or "drunkenness." Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is Incapacitated, and therefore unable to give Consent, requires an assessment of whether the consumption of alcohol or other drugs has rendered the individual physically helpless or substantially incapable of:
- making decisions about the potential consequences of sexual contact;
  - appraising the nature of one's own conduct;
  - communicating Consent to sexual contact; or
  - communicating unwillingness to engage in sexual contact.
- K. Informal Resolution** means a broad range of conflict resolution strategies, including, but not limited to, mediation, Respondent acknowledgement of responsibility, and/or negotiated interventions and remedies.
- L. Investigator** means a professionally trained University staff member or third-party contractor designated to conduct an impartial, fair, and unbiased investigation into an alleged violation of this Policy.
- M. No Contact Order** means an official directive that serves as notice to an individual that the individual must not have verbal, electronic, written, or third-party communications with another individual.
- N. Party** means the Complainant or the Respondent (collectively, the "Parties").



- O. **Preponderance of the Evidence** means that it is more likely than not that a Policy violation has occurred.
- P. **Remedies** means actions designed to restore or preserve the Complainant's equal access to the University's Education Program or Activity. Remedies are similar to Supportive Measures but may be punitive and burden the Respondent.
- Q. **Respondent** means the individual alleged to have engaged in Prohibited Conduct under this Policy.
- R. **Responsible University Employee** means all University administrators, supervisors, faculty members, UMPD, athletic coaches, athletic trainers, resident assistants, and first responders, who are not confidential resources.
- S. **Sanctions** means disciplinary and other consequences imposed on a Respondent who is found to have violated this Policy.
- T. **Support Person** means a person chosen by the Complainant or Respondent to provide emotional, logistical, or other kinds of assistance. The Support Person is a non-participant who is present to assist a Complainant or Respondent by taking notes, providing emotional support and reassurance, organizing documentation, or consulting directly with the Party in a way that does not disrupt or cause any delay. A Support Person shall not be an active participant or a witness, and the Parties must speak for themselves.
- U. **Supportive Measures** mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent to restore or preserve equal access to Education Programs or Activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or to deter Prohibited Conduct under this Policy.

#### IV. PROHIBITED CONDUCT

This Policy prohibits Sexual Harassment, Other Sexual Misconduct, and Retaliation as set forth below. Prohibited Conduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Prohibited Conduct can be committed by any person, regardless of gender identity, and can occur between people of the same or different sex, sexual orientation, or gender expression.

A. **Sexual Harassment**<sup>1</sup> means conduct on the basis of sex that satisfies one or more of the following:

(1) **Quid Pro Quo:** An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

(2) **Hostile Environment:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity.

(3) **Sexual Assault:** An offense classified as a sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sex Offenses are any sexual act including Rape, Sodomy, Sexual Assault With An Object, or Fondling directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent; also, unlawful sexual intercourse (Incest or Statutory Rape).

(a) **Rape:** Penetration, no matter how slight, of the vagina or anus 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.

(b) **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 their age or because of their temporary or permanent mental or physical incapacity.

(c) **Sexual Assault With An Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.

(d) **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.

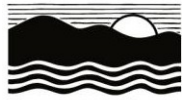
(e) **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(f) **Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent.<sup>2</sup>

(4) **Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the

<sup>1</sup> See 34 C.F.R. § 106.30 (defining "Sexual Harassment" under Title IX).

<sup>2</sup> The statutory age of consent in Maryland is 16. See Md. Code Ann., Crim. Law §§ 3-301 to -307.



persons involved in the relationship.

- (5) **Domestic Violence:** 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 under the domestic or family violence laws of Maryland, or by any other person against an adult or youth Complainant protected from that person's acts under the domestic or family violence laws of Maryland.
- (6) **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for their own safety or the safety of others; or (2) suffer substantial emotional distress.

B. **Other Sexual Misconduct** means the following conduct:

- (1) **Sexual Harassment** that occurred against a person outside of the United States or not within an Education Program or Activity.
- (2) **Sexual Coercion:** The use of unreasonable pressure in an effort to compel another individual to initiate or continue sexual activity against the individual's will. A person's words or conduct are sufficient to constitute Sexual Coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Sexual Coercion includes but is not limited to intimidation, manipulation, express or implied threats of emotional or physical harm, and/or blackmail. Examples of Sexual Coercion include but are not limited to causing the deliberate Incapacitation of another person; conditioning an academic benefit or employment advantage on submission to the sexual contact; threatening to harm oneself if the other party does not engage in sexual contact; or threatening to disclose an individual's sexual orientation, gender identity, gender expression, or other personal sensitive information if the other party does not engage in the sexual contact.
- (3) **Sexual Exploitation:** 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.
- (4) **Sexual Intimidation:** Threatening behavior of a sexual nature directed at another person, such as threatening to sexually assault another person or engaging in indecent exposure.
- (5) **Attempted Sexual Assault:** An attempt to commit Sexual Assault.
- (6) **Other Sex-Based Offenses:** (a) Unwelcome sexual advances; (b) unwelcome requests for sexual favors; or (c) other behavior of a sexual or gender-based nature where: (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, evaluation of academic work, or participation in a University-sponsored educational program or activity; (ii) submission to or rejection of such conduct by an individual is used as the basis for an academic, employment, or activity or program participation decision affecting that individual; or (iii) such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work 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.

C. **Retaliation** means intimidating, threatening, coercing, or discriminating against, or otherwise taking an adverse action against an individual for the purpose of interfering with any right or privilege secured by law or University policy relating to Prohibited Conduct, or because an individual has made a report, filed a complaint, testified, assisted, participated or refused to participate in any manner in an investigation, proceeding, or hearing related to Prohibited Conduct. Adverse actions include but are not limited to impeding an individual's academic advancement; terminating, refusing to hire, or refusing to promote an individual; or transferring





or assigning an individual to a lesser position in terms of wages, hours, job classification, or job security. Retaliation includes retaliatory harassment. Adverse actions, including charges against an individual for violations of other University policies that do not involve sex discrimination or Prohibited Conduct, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of Prohibited Conduct, for the purpose of interfering with any right or privilege secured by law, constitutes Retaliation. However, charging an individual with a violation of other University policies for making a materially false statement in bad faith in the course of a proceeding does not constitute Retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any Party made a materially false statement in bad faith. The exercise of rights protected under the First Amendment does not constitute Retaliation. The University will keep confidential, to the extent permitted by the Family Educational Rights and Privacy Act (FERPA), the identity of any individual who has made a report of Prohibited Conduct.

## **V. Title IX Administration**

### **A. Title IX Coordinator**

The Director of Human Resources is the UMCES Title IX Coordinator, as designated by the President. The Director of Human Resources is located at 2020 Horns Point Road, Cambridge, MD, which is the location of Center Administration. The office phone number is 410-221-2017 and the Title IX Coordinator can be reached via email at [titleix@umces.edu](mailto:titleix@umces.edu). The Title IX Coordinator is responsible for coordinating UMCES efforts to comply with and carry out its responsibilities under Title IX. The Title IX Coordinator will be trained on the requirements of Title IX and will ensure that training is provided for students, faculty and staff on Sexual Misconduct issues. The Title IX Coordinator will also oversee the UMCES's response to reports of Sexual Misconduct and identify and address any patterns or systemic problems revealed by such reports and complaints; conduct sexual misconduct investigations; oversee, review content, and, in collaboration with other UMCES offices, coordinate training for students, faculty, and staff on Sexual Misconduct issues; ensure that appropriate policies and procedures are in place for responding to complaints of Sexual Misconduct against faculty, staff and students; and work with UMCES officials and local law enforcement to ensure coordinated responses to Sexual Misconduct cases.

### **B. Title IX Team**

Headed by the Title IX Coordinator, UMCES has established a Title IX Team which members include the Vice President for Education, Graduate Student Representative, Environmental Safety Compliance Officer, and staff representative chosen by the UMCES Staff Council, and faculty representative chosen by the Faculty Senate. The Title IX Coordinator shall be responsible for coordinating the activities of the Title IX Team, which will include assistance in the training and other activities for the Title IX Coordinator cited above.

More details on contact information for the Title IX Coordinator and Title IX Team are located at <http://www.umces.edu/sexual-misconduct-resources>.



## VI. How to Report Sexual Misconduct and Retaliation

Individuals who believe they are a victim of Sexual Harassment, Other Sexual Misconduct or Retaliation are encouraged to report the incident. A third party, including an anonymous third party, may report Prohibited Conduct to UMCES as well. The individual may choose to report to a Responsible Employee, that is, an UMCES employee who must relay the incident to the Title IX Coordinator for appropriate investigation and resolution, or to a Confidential Resource. In some instances, the Sexual Misconduct alleged may constitute a criminal offense, and in those instances, the victim may desire to report to the local police. It is important that victims understand the roles and obligations of each of these individuals before making a report. These roles and obligations are detailed below.

### a. Responsible Employees

A “Responsible Employee” is an employee who (1) has the authority to take action regarding Prohibited Conduct; (2) is an employee who has been given the duty of reporting Prohibited Conduct; or (3) is someone another individual could reasonably believe has that authority or duty. At UMCES, Responsible Employees include all administrators, supervisors, and faculty members. Responsible Employees **cannot guarantee confidentiality**. Rather, Responsible Employees must promptly notify the Title IX Coordinator of any report of Sexual Misconduct brought to their attention. The Title IX Coordinator will work collaboratively with the reporting entity, making every effort to operate with discretion and maintain the privacy of the individuals involved.

If a complainant reports Prohibited Conduct to a Responsible Employee and subsequently requests that their name not be disclosed or that UMCES refrain from investigating or taking action against the respondent, the Title IX Coordinator will determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, faculty, and staff. The Title IX Coordinator shall make a determination as to whether the complainant’s request can be honored, by considering the following factors:

Circumstances that suggest there is an increased risk of the respondent committing additional acts of Sexual Harassment, Other Sexual Misconduct or other violence; Whether the respondent has any documented history of violence known to the University; Whether the respondent threatened further Sexual Harassment, Other Sexual Misconduct or other violence against the complainant or others that is known to the University; Whether the Sexual Harassment or Other Sexual Misconduct was committed by multiple persons; Whether the Sexual Harassment or Other Sexual Misconduct was perpetrated with a weapon; The age of the complainant subjected to the Sexual Harassment or Other Sexual Misconduct; Whether the lab/site possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence); and Whether any other health or safety concerns are implicated.

### b. Confidential Resources

An individual can speak confidentially with certain people in legally-protected roles. Notification to Confidential Resources does not constitute notice to UMCES. The following entities are Confidential Resources:

#### i. The Employee Assistance Program (EAP)

All UMCES employees and students have access to the Employee Assistance Program (EAP). Services include providing a general overview of sexual assault, steps to prevention of sexual





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assault, and helping employees recover from sexual assault. More information can be found at [www.inova.org/eap](http://www.inova.org/eap) (User ID UMCES, password UMCES EAP) or by calling 1-800- 346-0110.

## ii. Other Resources.

The following website provides the locations of state designated rape crisis programs throughout the State of Maryland

<http://www.mcasa.org/for-survivors/maryland-rape-crisis-and-recovery-centers-5>

It is important that if you seek confidential assistance from an agency that is not affiliated with UMCES that you first inquire about the parameters of confidentiality before disclosing any information that you desire to keep confidential.

## c. Reporting to the Police

**Some forms of Prohibited Conduct constitute criminal offenses. UMCES encourages victims of criminal Sexual Misconduct to report these crimes to the local police. Reports to the local police are not confidential.** UMCES authorities will assist in notification of off- campus authorities at the request of the alleged victim. Additionally, UMCES personnel will retain the right to contact law enforcement personnel directly where an issue of UMCES site security is involved.

## d. Timeline for Reporting Instances of Sexual Misconduct

Although UMCES will investigate any report of Prohibited Conduct, regardless of how much time has elapsed since the alleged incident occurred, prompt reporting is encouraged. Persons are encouraged to report Prohibited Conduct promptly in order to maximize the University's ability to obtain evidence, identify potential witnesses and conduct a thorough, prompt, and impartial investigation. While there are no time limits to reporting Sexual Misconduct, if too much time has passed since the incident occurred, the delay may result in loss of relevant evidence and witness testimony, impairing UMCES ability to respond and take appropriate action.

# VII. Procedures

## a. General

Once UMCES knows or reasonably should know of possible Prohibited Conduct, it must take prompt and appropriate action, in accordance with these procedures set forth below, to review the allegations of misconduct or otherwise determine what occurred. This obligation applies to Prohibited Conduct covered by this Policy regardless of where the conduct allegedly occurred, regardless of whether a parallel law enforcement investigation or action is pending, and regardless of whether a formal complaint is filed. The Title IX Coordinator is responsible for investigating and resolving allegations of P. The Title IX Coordinator is not an advocate for any party.

## b. Preliminary Steps

Upon receipt of a complaint or report, the Title IX Coordinator will notify the Respondent(s)



in writing of the alleged policy violation. The Title IX Coordinator will ensure that all parties are provided with: (1) a copy of the Policy and Procedures; (2) Options under the resolution process, and (3) notice of Rights and Responsibilities..

In addition, the Title IX Coordinator will explain to the parties the following:

- i. The informal and formal resolution options, if applicable.
- ii. As appropriate, provide to both parties information about options for obtaining medical and counseling services; information about making a criminal report, information about receiving advocacy services, and information about other helpful campus and community resources.
- iii. Offer to coordinate with other campus officials, when appropriate, to implement interim remedial measures such as no-contact orders, rearrangement of living or working arrangements, or academic accommodations.
- iv. Assist victims of sexual assault with obtaining appropriate medical attention, including transportation to the nearest local hospital. Explain the investigation and adjudication process. The Title IX Coordinator will explain the parties' rights to have similar and timely access to information, to present witnesses and evidence, and to be accompanied to any proceeding by an advisor.
- v. If the complainant does not want to participate in the complaint process, the Title IX Coordinator will inform the individual that the University may be limited in the actions it can take without the cooperation of the individual and also that UMCES may nonetheless proceed in abstentia, depending on the health and safety implications of the circumstances.

Inform both parties that Retaliation for reporting Sexual Misconduct or participating in a Sexual Misconduct investigation is strictly prohibited and that any Retaliation should be immediately reported to the Title IX Coordinator to be promptly addressed.

7. Notify the parties that in some cases, UMCES may have a legal obligation to investigate the complaint, even if the Complainant does not choose to pursue it.

### **c. Initial Assessment**

When a Responsible Employee is made aware of a report of alleged Sexual Misconduct, the Responsible Employee will immediately notify the Title IX Coordinator. The Title IX Coordinator will conduct a prompt initial assessment. The assessment, which typically consists of an initial meeting between the Title IX Coordinator and the Complainant, will determine whether the alleged conduct, if deemed to be true, would constitute a violation of the UMCES Sexual Misconduct Policy. In its initial assessment, the Title IX Coordinator will work with relevant UMCES officials to determine the risk of harm to the broader campus community and take steps necessary to address any risks, implement any interim measures, assess the nature and circumstances of the allegation, assess for pattern evidence or other similar conduct by the alleged Respondent, assess Complainant's expressed preference regarding resolution and any request for confidentiality, and assess whether the alleged



misconduct necessitates a timely warning notification under the Clery Act.

If an initial assessment reveals that the Title IX Coordinator lacks jurisdiction over any alleged action, the Title IX Coordinator will, if warranted and available, forward the complaint to any appropriate body for consideration and action.

#### **d. Supportive Measures**

Reports of conduct in violation of this policy may require immediate protective measures to protect the safety and well-being of the parties and/or the UMCES community pending the outcome of the investigative and adjudicative processes. Any participant in the investigation process may request that UMCES implement Supportive Measures to assist or protect the parties during the investigation and adjudicatory process, as necessary. Interim Measures may include the following:

##### **i. For Students and Employees**

*No Contact Order.* A no contact order is an official UMCES directive that serves as notice to an individual that they must not have verbal, electronic, written or third party communications with another individual.

*Referral to the Employee Assistance Program for confidential counseling services*

##### **ii. For Students:**

*Academic accommodations* such as assistance in transferring to another section of a lecture or laboratory, assistance in arranging for incompletes, leaves or withdrawal from campus, or rearranging class schedules,

*Housing accommodations* such as facilitating changes in on-campus housing location to alternate housing, assistance in exploring alternative housing off-campus,

*Employment accommodations* such as arranging for alternate UMCES employment, different work shifts, etc.

##### **iii. For Employees:**

*Employment accommodations:* Any party may request a temporary reassignment, if appropriate, to other work duties and responsibilities, or other work locations, or other work groups/teams or alternative supervision/management.

The Title IX Coordinator will also advise the participants in the investigation of existing options for counseling, health, mental health, victim advocacy, and other known services available on and off campus.

UMCES operates at multiple sites across the State. Each UMCES site is unique and offers different resources. The Title IX Coordinator will work with individuals to explore which Interim Measures are reasonably available at the different sites.



#### **e. Advisors**

Complainants and Respondents are entitled to be accompanied to any related meeting under these Procedures by up to two (2) people, including: one (1) Support Person, and one (1) Advisory. Notice of the identity of any Advisor and/or Support Person and their expected appearance must be given to the Title IX Coordinator least 24 hours prior to any meeting or proceeding that the Advisor and/or Support Person will attend.

Throughout the process, the Title IX Coordinator or designee will communicate and correspond directly with the Parties, not indirectly through a Support Person or Advisor.

#### **f. Resolution**

There are two avenues for resolution of allegations of Sexual Misconduct: Formal and Informal.

##### **i. Formal Process**

###### **a) How to Start the Formal Process**

A party wishing to initiate a formal process (i.e., a formal investigation and adjudication) should file his/her complaint in writing or in person with the Title IX Coordinator as promptly as possible to permit UMCES to accurately investigate the allegations and appropriately remedy any violation(s). The complaint should be signed by the Complainant and should include the following information: a description of the allegations with relevant dates, places and statements made, the name(s) of the person(s) involved, the names of any witnesses to the events in question, any documentation to support and substantiate the claim (e.g. emails, text messages, photographs, social media posts, and any other documented evidence that bears on the allegations in the complaint), and the remedy requested. In lieu of a written Complaint, the Title IX Coordinator may interview the Complainant, document the Complainant's statements, and attempt to obtain the Complainant's signature on those notes to signify that the Complainant agrees with the description of the alleged Sexual Misconduct as recounted in the Title IX Coordinator's notes. If the Complainant refuses to cooperate with the investigation, is reluctant to pursue the investigation, or for any reason refuses to sign the alleged complaint, the Title IX Coordinator may go forward with formal investigatory and adjudicatory procedures, as required, to address the allegations of Sexual Misconduct, prevent its recurrence, and remedy its effects on the Complainant and the UMCES community.

###### **b) Written Notice of Designation**

Once received, the Title IX Coordinator or designee will promptly send a Written Notice of Designation simultaneously to both Parties of:

1. Its decision about whether the conduct has been designated Title IX-based Prohibited Conduct (i.e., Sexual Harassment and/or Retaliation) or non-Title IX-based Prohibited Conduct (i.e., Other Sexual Misconduct or non-sex based conduct); and the reasons for the this decision;
2. Its decision to proceed with the resolution process or to dismiss the Formal Complaint; and
3. The Parties' rights to appeal the designation and/or dismissal decision.



**c) Title IX-based Prohibited Conduct**

The Title IX Coordinator or designee must designate the alleged conduct as Title IX-based Prohibited Conduct if:

1. The alleged conduct would constitute Sexual Harassment within an Education Program or Activity (as defined by Federal Title IX Regulations) against a person in the U.S. if substantiated; and
2. The Complaint is participating or attempting to participate in an Education Program or Activity at the time the Complaint files a Formal Complaint, or the Title IX Officer files a Formal Complaint because the alleged conduct meets the above definition.

**d) Mandatory Dismissal**

The Title IX Coordinator or designee must dismiss a Formal Complaint or any allegations therein under this Policy if, at any time during the Resolution Process it is determined that:

1. The Conduct alleged in the Formal Complaint, if substantiated would not constitute Prohibited Conduct; or
2. The allegations in the Formal Complaint do not fall within the University's jurisdiction.

**e) Permissive Dismissal**

The Title IX Coordinator or designee may dismiss a Formal Complaint or any allegations therein if, at any time during the Resolution Processes:

1. A Complainant notifies the Title IX Coordinator or designee in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; or
2. The Respondent is no longer enrolled in or employed by the University; or
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint allegations therein.

**f) Appeal of Designation and/or Dismissal**

Either Party may appeal the Written Notice of Designation. The bases for appeal are limited to procedural irregularity, new evidence and conflict of interest by the official making the designation (i.e., the Title IX Coordinator or designee).

ii. Informal Process and Resolution

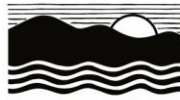
An Informal Resolution may serve to address the alleged Prohibited Conduct as an alternative to a formal process involving an investigation and hearing. The purpose of an Informal Resolution is to address reported conduct by implementing community interventions and remedies that achieve equal access to Education Programs and Activities, as well as address the effects of the conduct on the larger University community.

Either Party may request an Informal Resolution, including their requested approach for reaching a resolution, such as: Mediation; Respondent admitting responsibility; Providing training to an individual or group; Having an informal discussion with an individual whose conduct, if not stopped, could rise to the level of harassment or discrimination; Implementing long-term remedial measures; Increasing security at specified locations; and any other remedy that can be tailored to the parties in order to achieve their goals through the informal process.

*Informal Resolution Not Permitted*

An Informal Resolution is not permitted under the following circumstances:

- iii. Formal Complaints by a student alleging *Quid Pro Quo* Sexual Harassment against



- an employee (staff or faculty); or
- iv. Formal Complaints alleging Sexual Assault or Sexual Coercion (even if both the Complainant and Respondent indicate a preference for informal resolution).

#### *Procedures*

If a Complainant desires to proceed informally, the Title IX Coordinator should obtain written consent from Complainant to pursue informal resolution and should notify the Complainant that he or she may terminate the informal process at any time and proceed with a formal process. Thereafter, the Title IX Coordinator will facilitate discussions with the parties to determine how best to resolve the complaint through an informal process. Informal complaints may be resolved by mediation, facilitated by the Title IX Coordinator; by written agreement of the parties, provided that the agreement has been approved by the Title IX Coordinator; or by any other resolution that the parties propose and that Title IX Coordinator approves.

In all instances, the informal resolution must adequately address the concerns of the Complainant, as well as the rights of the Respondent and the overall intent of UMCES to stop, remedy and prevent Sexual Misconduct and related Retaliation.

#### *Option to Request a Formal Process*

At all times, the Complainant, the Respondent, and the Title IX Coordinator retain the discretion to initiate a formal investigation. If at any point during the informal process, the Complainant, the Respondent, or the Title IX Coordinator wishes to cease the informal process and to proceed through formal grievance Procedures, the formal process outlined below, will be invoked.

### **g. Investigative Process**

#### **a) Notice of Investigation**

The Respondent, the person accused in the complaint, shall be notified in writing of the initiation of the formal process by the Title IX Coordinator and will be invited to submit a written response to the Title IX Coordinator within ten (10) calendar days of receiving the notification. In the event that UMCES is the Complainant, the person alleged to have experienced Prohibited Conduct will also be notified that UMCES is pursuing a formal resolution of the alleged misconduct.

#### **b) Investigation**

Upon receipt of the written complaint, the Title IX Coordinator shall begin or appoint an Investigator to begin an investigation into the claims. The investigation ordinarily will include a discussion with the Complainant, a discussion with the Respondent, interviews of any witnesses to the events, a review of any pertinent documents and any other actions deemed appropriate by the Title IX Coordinator/Investigator. As additional evidence, party testimony, witness testimony, and other relevant information comes to light during the course of the investigation, the Title IX Coordinator/Investigator will follow up on the new information, as appropriate. The Title IX Coordinator/Investigator shall make every effort to keep the investigation confidential, although this cannot be guaranteed. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. In these cases, privacy and confidentiality should be maintained to the extent possible.





All parties will be apprised of any evidence before the Title IX Coordinator/Investigator and will have the opportunity to be heard with regard to any evidence collected. All parties will have the same access to information to be used and considered during the process, and the same opportunity to present names of relevant witnesses and identify and provide evidence during the process.

### **c) Investigation Report**

Once an investigation has concluded, the Title IX Coordinator/Investigator will provide a Draft Written Investigation Report ("Draft Report") that provides a case timeline, summarizes the information gathered (including, but not limited to, the names of witnesses and summaries of their statements), and evidence that is directly related to the Formal Complaint.

The Parties will be given ten (10) days to review and provide a written response to the Draft Report, including comments, information, and/or questions to the Investigator. If there is any new or additional information to be provided by either Party, it must be presented to the Investigator at this time.

After the Investigator receives Parties' written responses to the Draft Report, the Investigator will consider the responses, further investigate as needed, and complete the Final Investigative Report.

The Final Investigative Report will be submitted to the Hearing Officer.

Once the Final Investigative Report is complete and submitted to the Hearing Officer, the Parties will:

- i. Have the Opportunity to meet with the Title IX Coordinator separately to review the Final Investigative Report and all evidence presented to the Hearing Officer;
- ii. Be Provided with a Confidential\* copy of the Final Investigation Report; and
- iii. Be Provided ten (10) days to submit a written response to the Final Investigation Report, which will be considered by the Hearing Officer.

\*All materials shared with the Parties are considered confidential and should not be publicly disclosed or released.

### **d) Hearing**

After the Final Investigation Report has been issued, the Title IX Coordinator shall notify the Parties of:

1. The date, time and location of a Hearing that will be presided over by a University appointed Hearing Officer/Panel charged with determining whether a Respondent has violated University Policy, and if so, issue appropriate sanctions;
2. The right to request that a hearing be conducted remotely but synchronously (e.g., Parties and Witnesses need not be present in the same geographic location during the hearing, but Parties must be able to be present at all times at the Hearing virtually);
3. An Overview of the Hearing Process – outlining the Hearing rights and responsibilities of Parties, Advisors and Support Persons;
4. An Overview of the Evidentiary Rules to which the Parties and Advisors must adhere; and
5. The right to submit proposed questions to be presented to Parties and Witnesses at the



Hearing.

**e) Standard of Proof and Evidence**

The required standard of proof in all Prohibited Conduct matters is “preponderance of the evidence.” Preponderance of the evidence means that the information and facts establish that it is “more likely than not” that the alleged conduct occurred.

In determining whether the alleged conduct constitutes Sexual Harassment, Other Sexual Misconduct or Retaliation, the Hearing Officer/Panel will look at the Final Investigation Report, Information Gathered During the Investigation, Written Responses of the Parties to the Final Investigation Report, and Accepted Testimony at the Hearing.

**f) Outcome**

**a. Outcome**

A written decision (Outcome) shall be prepared by the Hearing Officer/Panel following the Hearing, setting forth (1) a statement of the findings of fact concerning the alleged events; (2) a statement identifying relevant elements of the policy to support the conclusion that a violation of UMCES policy did or did not occur based on a preponderance of the evidence; (3) sanction(s), if applicable; and (4) notification of right to appeal (hereinafter “Outcome”). The Title IX Coordinator will notify the parties concurrently, in writing, about the Outcome of the complaint and whether or not Prohibited Conduct was found to have occurred.

**b. Possible Sanctions**

In instances where Prohibited Conduct and/or Retaliation are found to have occurred by a preponderance of the evidence, the range of sanctions for students includes, but is not limited to, one or more of the following: alteration of class schedule, disciplinary reprimand, loss of privilege, restitution, disciplinary probation, disciplinary suspension, disciplinary dismissal, and disciplinary expulsion. Sanctions for faculty and staff range from a formal reprimand to employment termination, depending on the nature and severity of the misconduct.

**c. Other University Process Implications**

Where a tenured or tenure-track faculty member is found responsible for Prohibited Conduct, or where further University action is required prior to implementing any discipline for any employee, per applicable policies or agreements and as authorized by Federal Regulations, any Outcome should indicate that the institution will take necessary steps to proceed with the specified sanction. At that point, the institution would take steps pursuant to the USM Appointment, Rank & Tenure Policies, applicable MOU, or other applicable separate procedures to seek implementation of the sanction.

**h. Appeals**



i. The parties may appeal the portions of the Outcome notice that directly relate to that party. This means that the complainant and the respondent may only appeal the portions of the Outcome articulated in the notice of Outcome as described above. Mere dissatisfaction with the Outcome is not a valid basis for appeal. The appeal must be submitted in writing to the Title IX Coordinator within five (5) business days of receipt of the notice of Outcome and must list at least one of the grounds for appeal as listed below.

The scope of the appeal is limited only to the three permissible grounds that have been accepted for review (listed below). If the appeal request moves forward, the other party will be notified and given five (5) business days to respond. Responses shall be submitted directly to the Title IX Coordinator or designee. Appeals filed by each party will be considered together in one appeal review process. Receipt of the written appeal will be acknowledged in writing. The parties may have their Attorney or Non-Attorney Advisor submit written responses on their behalf.

ii. Grounds for appeal shall be limited to:

1. Procedural Error: A violation of procedural due process means that the decision was negatively influenced by a failure of the Title IX Coordinator to take a procedural step or fulfill a procedural requirement established by this policy.
2. New Evidence: New evidence is significant evidence that could not have been previously discovered and presented by the appellant through reasonable diligence.
3. Substantive Due Process: A violation of substantive due process means that the Title IX Coordinator decision was based upon an illegal or constitutionally impermissible consideration (e.g. party's gender, race, age, national origin, sexual orientation or a party's exercise of first amendment freedoms)

If neither party submits an appeal, the Title IX Coordinator Outcome becomes final after five (5) business days. Appeals submitted after five (5) business days will be denied.

Considerations In any request for an appeal, the burden of proof lies with the party requesting the appeal because the Title IX Coordinator Outcome is presumed to be a reasonable and just determination. Appeals are not intended to allow for a rehearing of the complaint. A review of the matter will be prompt and narrowly tailored to the stated appeal grounds. In most cases, appeals are confined to a review of the written record and the pertinent documentation regarding the grounds for appeal (i.e. the Final Investigative Report, Outcome, and the written record as contained in the Notice of Appeal submitted by the appellant. The Title IX Coordinator will concurrently inform the parties of any change to the Outcome that occurs before the results of the appeal become final.

**i. Timeframe**

**i. 60-Day Timeframe**

The investigatory and adjudicatory process will be conducted promptly and fairly. "Prompt" generally means within 60 calendar days from the time a report is brought to the institution's attention until an initial decision is rendered. The 60-day timeframe does not include the appeals' process.

**ii. Extension of Timeframe**

UMCES strives to take appropriate action, including investigation and resolution of complaints within sixty (60) calendar days from when the complaint was filed; however there may be circumstances that prevent an institution from meeting the 60-day timeline. UMCES may extend the time frames set forth in this policy for good cause, with written notice to both parties of the delay and the reason for the delay. Exceptions to this timeframe may vary depending on the complexity of the investigation, access to relevant parties, and the severity and extent of the misconduct.

**j. Concurrent Criminal Investigations**

Because the standards for a violation of criminal law are different from the standards for a violation of this policy, criminal investigations and proceedings are not determinative of whether a violation of this policy has occurred. In other words, conduct may violate this policy even if law enforcement agencies or local prosecutors decline to prosecute. Complaints of sexual misconduct and related internal UMCES processes may occur prior to, concurrent with, or following criminal proceedings off campus. In addition to making a criminal report, the complainant also has the right to file a complaint with UMCES and engage the UMCES investigation and adjudicative processes.

UMCES is required to conduct an investigation in a timely manner, which means in most cases, the University will not wait until a criminal investigation or proceeding is concluded before conducting its own investigation, implementing interim protective measures, and taking appropriate action. However, *at the request of law enforcement*, the Title IX Officer, may defer its fact gathering, until the initial stages of a criminal investigation are complete, provided that the delay does not cause the investigation and adjudication process to extend beyond the 60-day timeframe. The Title IX Coordinator will communicate any necessary delays in UMCES's investigative process to both parties in the event of a deferral.

**k. Complaints Against Third Parties Not Affiliated With UMCES.**

If a member of the UMCES community (student, faculty or staff) is subjected to Sexual Harassment or Other Sexual Misconduct by a third party not affiliated with UMCES on UMCES premises or during UMCES sponsored activities, the matter may still be reported to the Title IX Coordinator (and must be reported to the Title IX Coordinator if disclosed to a Responsible Employee). The matter may be referred to law enforcement with a request that a formal letter be issued to the third party denying access to UMCES's buildings or grounds for acting in a manner that disrupts or disturbs the normal functions of the institution. The Title IX Coordinator will confer with the complainant to implement any other appropriate and



readily available interim and remedial measures. UMCES is authorized to deny campus access to a third party engaged in disruptive behaviors under Maryland State law (see Sections 26-101 and 26-102, Education Article, Annotated Code of Maryland).

### **I. Amnesty for Students Who Report Sexual Misconduct**

The UMCES recognizes that a student who is under the influence of alcohol and/or drugs at the time of an incident may be hesitant to make a report of Sexual Misconduct because of the threat of disciplinary sanctions for his or her own violation of the Code of Student Conduct (i.e., alcohol or drug use violation) they are subject to under the institutions at which they matriculate. UMCES will honor any amnesty policies that are in effect at the matriculating institutions for students who report Sexual Misconduct, either as a complainant or a third party witness.

### **m. Other Applicable Policies**

Violation of the UMCES Sexual Misconduct Policy may also constitute a violation of policies at a student's matriculating institution or an employee's home institution. Students and employees who are found to have engaged in Sexual Misconduct or Retaliation may be subject to discipline under this policy or multiple policies in instances where a student or employee is affiliated with more than one institution.

## **VII. Training**

### **A. Prevention and Awareness Education**

UMCES is implementing preventive education, directed toward both employees and students, to help reduce the occurrence of Sexual Misconduct. These educational initiatives aspire to inform the UMCES community regarding what constitutes Sexual Misconduct; they define consent and prohibited conduct; they apprise the UMCES community regarding the institution's procedures; and they educate the UMCES community about bystander intervention, risk reduction, and the consequences of engaging in Sexual Misconduct. These educational initiatives are available to all incoming students and new employees. UMCES is also developing ongoing prevention and awareness campaigns for all students and employees.

UMCES shall make its training materials available on its website.

### **B. Training for Persons Involved in Sexual Misconduct Cases**

All persons involved in any way in responding to, investigating, or adjudicating Sexual Misconduct reports, including but not limited to, the Title IX Coordinator and Responsible Employees must have annual training in receiving, reporting and handling complaints of Sexual Misconduct; must be familiar with the institution's procedures; and must understand the parameters of confidentiality.

## **VIII. Resources for Victims of Sexual Assault**

### **A. Confidential Counseling Resources**



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All UMCES employees and students have access to the Employee Assistance Program (EAP). Services include providing a general overview of Sexual Assault, steps to prevention of Sexual Assault, and helping employees recover from Sexual Assault. More information can be found at [www.inova.org/eap](http://www.inova.org/eap) (User ID UMCES, password UMCES EAP) or by calling 1-800-346-0110.

#### B. Other Resources

Joint degree seeking students may have resources available at their home campus where they currently matriculate. Campus health centers may be able to provide support. Links to campus resources is available at <http://www.umces.edu/sexual-misconduct-resources>.

In addition, the following website provides the locations of state designated rape crisis programs throughout the State of Maryland

<http://www.mcasa.org/for-survivors/maryland-rape-crisis-and-recovery-centers-5/>

#### C. Contact Information for a Victims of Sexual Misconduct

Title IX Coordinator/ Director of Human Resources/Title IX Coordinator—410-221-2017

Based on physical location:

Appalachian Laboratory (AL) HR - 301-689-7111  
AL - MD State Police, Cumberland - 301-729-2101

Center Administration (CA) HR – 410.221.2017  
CA - MD State Police, Easton – 410-822-3101 or  
Dorchester County Sheriff Department - 410-228-4141

Chesapeake Biological Laboratory (CBL) HR - 410-326-7365  
CBL—MD State Police, Prince Frederick - 410-535-1400 or  
Calvert County Sheriff Department - 410-535-2800

Horn Point Laboratory (HPL) HR - 410-221-8241  
HPL - MD State Police, Easton – 410-822-3101 or  
Dorchester County Sheriff Department - 410-228-4141

Institute of Marine and Environmental Technology (IMET) HR - 410-234-8839  
IMET - Central District Station Baltimore Police Department – 410-396-2411

MD Sea Grant College (MDSG) HR -301-405-6385  
MDSG - University of Maryland Police Department -310-405-3555

Annapolis Office/ IAN Business Manager-410-622-3891  
IAN - Annapolis Police Department - 410-268-9000 or  
MD State Police, Glen Burnie – 410 -761-5130

#### D. Self-Care and Safety for the Victim

If you are a victim of Sexual Misconduct, it is important that you get to a safe location. After an assault, you may be in a state of shock.





Although the first reaction may be to clean up, DO NOT. Instead, you should wrap in something warm, such as a blanket or coat. Staying warm, instead of cleaning up right away will accomplish two important things:

It will help in recovering from the shock;

It is less likely that the evidence will be disturbed or destroyed if you decide to report the assault to law enforcement.

It is important that you seek medical attention as soon as possible after a sexual assault. A medical exam is important for two reasons:

It ensures that you receive appropriate medical treatment;

A Sexual Assault Forensic Exam (SAFE) is essential in the collection of physical evidence if the victim decides to make a formal report to law enforcement.

You can receive an anonymous SAFE that will collect evidence to assist in the investigation of the crime, and also attend to their medical needs at no cost. Individuals who obtain SAFE exams will be registered as a patient of the hospital, but their identity will be anonymous to the police.

UMCES personnel will assist the alleged victim in obtaining medical attention, if the victim chooses, including providing transportation to the nearest hospital or other emergency medical facility during normal business hours. For off-hours emergencies call 911.

The following hospitals are equipped with the Maryland State Police sexual assault evidence collection kit and are nearby UMCES sites:

AL - Western MD Health System Cumberland - 240-964-7000

CA - Dorchester General Hospital - 410-228-5511

CBL - Calvert Memorial Hospital - 410-535-4000

HPL - Dorchester General Hospital - 410-228-5511

IAN Annapolis—Anne Arundel Medical Center - 443-481-1000

IMET - University of Maryland Medical Center - 410-328-8667

MDSG - University of Maryland Health Center - 301-314-8180  
or Doctors Community Hospital—310-552-8118

## **IX. Clery Act Compliance**

In handling Sexual Misconduct reports and in accordance with the requirements of the Crime Awareness and Campus Security Act of 1990 (“Clery Act”) and its amendments, the Title IX Coordinator with appropriate Title IX Team member and Lab Officials will ensure MOU’s with local



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law enforcement are in place to meet the crime reporting and information obligations.

## **X. Record Keeping**

The Title IX Coordinator will keep records of actions taken under this policy, including, but not limited to, records of any reports of Sexual Misconduct, records of any proceedings or resolutions, and records of any Sexual Misconduct trainings (including, but not limited to, lists of trainees, dates of training, and training content), and must maintain such records in accordance with the institution's Records Retention Schedule.

## **XI. Complaints**

Inquiries concerning the application of Title IX may be referred to the Title IX Coordinator or to the Department of Education Office for Civil Rights.