

## **XII. Appendix C: Laws and Regulations Timeline**

The following timeline highlights key events in the history of campus sexual misconduct laws and regulations:<sup>51</sup>

- 1972:** Title IX of the Education Amendments of 1972 is enacted (“Title IX”). Title IX prohibits discrimination on the basis of sex in all federally assisted education programs and activities.
- 1975:** Department of Health, Education and Welfare (HEW) issues final Title IX regulations; colleges are given three years to comply. HEW publishes “Elimination of Sex Discrimination in Athletics Programs” and sends it to college and university presidents.
- 1980:** Department of Education is established; Title IX oversight assigned to its Office for Civil Rights (OCR). OCR issues Title IX compliance Interim Investigators’ Manual to investigators in its regional offices.
- 1986:** The rape and murder of Lehigh University student Jeanne Clery puts national spotlight on the issue of campus crime and violence.
- 1987:** OCR publishes “Title IX Grievance Procedures: An Introductory Manual” to assist schools with their obligations to establish a Title IX complaint procedure and designate a Title IX coordinator to receive those complaints.
- 1990:** The Crime Awareness and Campus Security Act is first enacted, requiring colleges and universities participating in federal student aid programs to disclose campus security

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<sup>51</sup> Sources:

<http://now.org/blog/some-history-behind-womens-history-month/>

<http://www.equalrights.org/title-ix-timeline/>

<https://www2.ed.gov/pubs/TitleIX/part3.html>

<http://www.ncwge.org/PDF/Title%20IX%20Timeline.pdf>

<http://www.nowldef.org/history-vawa>

<http://www.justice.gov/ovw/about-office>

<http://clerycenter.org/summary-jeanne-clery-act>

<http://www.justice.gov/ovw/responding-campus-sexual-assault>

<http://notalone.gov>

<http://www.whitehouse.gov/http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>

<http://www2.ed.gov/about/offices/list/ocr/whatsnew.html>

information. In 1998, the law expands reporting requirements and is formally named in the memory of Jeanne Clery ("Clery Act"). In 2000 and 2008, Clery Act amendments add provisions dealing with registered sex offender notification, campus emergency response, and protection of crime victims and whistleblowers from retaliation.

OCR updates and finalizes its Title IX Investigator's Manual, originally issued in 1980.

**1993:** The Maryland General Assembly enacts Chapter 226, entitled "Higher Education- Sexual Assault Policy," which requires each institution of higher education to adopt and submit a written policy on sexual assault to the Maryland Higher Education Commission for review and make recommendations.

**1994:** Congress passes Violence Against Women Act of 1994 (VAWA 1994) as part of the Violent Crime Control and Law Enforcement Act of 1994. VAWA is expanded in 2000 and again in 2005 to cover not only domestic violence, but sexual assault and stalking.

**1995:** The Department of Justice, Office on Violence Against Women (OVW) is created. OVW administers financial and technical assistance to communities across the country that are developing programs, policies, and practices aimed at ending domestic violence, dating violence, sexual assault, and stalking.

**1997:** OCR issues "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties." This document describes standards for Title IX compliance for schools' sexual harassment policies and details OCR's standard procedures for investigating and resolving allegations of sexual harassment; it also emphasizes that institutions are responsible for student-on-student sexual harassment.

**1998:** OVW's Grants to Sexual Assault, Domestic Violence, Dating Violence, and Stalking on Campus Program is authorized, funding higher education institutions to adopt comprehensive responses to domestic violence, dating violence, sexual assault, and stalking.

U.S. Supreme Court rules in *Gebser v. Lago Vista Independent School District* that a student may sue a school for damages for a teacher's sexual harassment only if the school had actual notice of the teacher's misconduct and acted with deliberate indifference to the harassment.

**1999:** U.S. Supreme Court rules in *Davis v. Monroe County Board of Education* that Title IX covers student-on-student harassment. To be actionable, the harassment must be so severe, pervasive, and objectionably offensive that it deprives the victims of access to the benefits of education. Damages are available only if the school had actual notice of the misconduct and acted with deliberate indifference to the harassment.

**2001:** OCR issues “Revised Sexual Harassment Guidance.”

**2011:** OCR issues policy guidance, in the form of a Dear Colleague Letter, that clarifies Title IX’s protections against sexual harassment and sexual violence.

**2013:** President Obama signs into law the reauthorization of VAWA, Violence Against Women Reauthorization Act of 2013. This legislation updates the Clery Act.

The Campus Sexual Violence Elimination (SaVE) Act is enacted to address violence faced by women on college campuses. This legislation is passed as part of VAWA and similarly updates the Clery Act.

**2014:** The website NotAlone ([www.notalone.gov](http://www.notalone.gov)) is launched in connection with the White House Task Force to Protect Students from Sexual Assault. The website includes links to non-governmental organizations, websites and other resources.

OCR further clarifies Title IX legal requirements regarding sexual harassment and sexual violence in its 2014 Dear Colleague Letter.

The White House Task Force to Protect Students from Sexual Assault publishes its first report in April 2014, and launched its “1is2many” Public Service Announcement.

For the first time, OCR releases the names of colleges and universities under investigation for possible Title IX violations related to their responses to incidents of sexual violence and other gender discrimination on campus.

The U.S. Department of Education promulgates a final rule on amendments to the Clery Act under VAWA, and issues guidance to institutions regarding the implementation of those changes.

The White House launches the “Its On Us” public awareness campaign to Protect Students from Sexual Assault.

### **XIII. Appendix D: University System of Maryland Policy on Sexual Misconduct**

**Begins on the next page.**



## UNIVERSITY SYSTEM OF MARYLAND

### **VI-1.60 – POLICY ON SEXUAL MISCONDUCT (Approved by the Board of Regents, June 27, 2014)**

#### **PURPOSE & APPLICABILITY**

The University System of Maryland (USM) 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. USM 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 as amended, and also may constitute criminal activity.

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

#### **I. Definitions**

For purposes of this Policy, the following definitions apply. While institutions may adopt their own definitions that do not conflict with the language below, institutions are strongly encouraged, at a minimum, to adopt the elements of these definitions in institution policies/procedures:

- A. 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.

- B. 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.
- C. 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 protected from those acts by domestic or family violence laws of Maryland.
- D. Interim Measures** means reasonably available steps an institution may take to protect the parties while a Sexual Misconduct investigation is pending.
- E. Responsible Employee** includes any employee who (1) has the authority to take action regarding Sexual Misconduct; (2) is an employee who has been given the duty of reporting Sexual Misconduct; or (3) is someone another individual could reasonably believe has this authority or duty. At a minimum, Responsible Employees must include: the Title IX Coordinator and any Title IX Team members, all institution administrators, all non-confidential employees in their supervisory roles, all faculty, all athletic coaches, institution law enforcement, and all other non-confidential first responders.
- F. 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 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.

**G. 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.

- H. 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.
- I. 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 USM or USM 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.
- J. 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.
- K. Sexual Misconduct** is an umbrella term that includes Dating Violence, Domestic Violence, Sexual Exploitation, Sexual Harassment, Sexual Intimidation, Sexual Violence, and Stalking.
- L. Sexual Violence** is a form of Sexual Harassment and refers to physical sexual acts perpetrated without Consent. Sexual Violence includes rape, Sexual Assault, sexual battery, and sexual coercion. Sexual Violence, in any form, is a criminal act.

**M. 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.

## **II. Institutional Obligations**

### **A. Title IX Compliance Oversight**

#### **1. Title IX Coordinator**

Each Chief Executive Officer of a USM institution shall designate a Title IX Coordinator responsible for coordinating the institution's efforts to comply with and carry out its responsibilities under Title IX.

The Title IX Coordinator must have adequate training on the requirements of Title IX, including what constitutes Sexual Misconduct, Consent, credibility assessments, and counter-intuitive behaviors resulting from Sexual Misconduct. The Coordinator must understand how relevant institution procedures operate and must receive notice of all reports raising Title IX issues at the institution.

#### **2. Title IX Team**

Depending on the size and specific needs of the institution, the institution may want to identify a Title IX Team, which may include the Title IX Coordinator, Deputy Title IX Coordinators, Title IX investigators, and representatives from campus safety, Student Affairs, the Provost's Office, and Human Resources. The Title IX Coordinator shall be responsible for coordinating the activities of the Title IX Team.

### **B. Notice of Nondiscrimination**

#### **1. Content**

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

- a. Title IX prohibits the institution from discriminating on the basis of sex in its education program and activities;
- b. Inquiries concerning the application of Title IX may be referred to the institution's Title IX Coordinator or the Office for Civil Rights; and
- c. The Title IX Coordinator and any Title IX Team Member's title, office address, telephone number and email address.



## **2. Dissemination of Notice**

The notice must be widely distributed to all students, employees, applicants for admission and employment, and other relevant persons. The notice must be prominently displayed on the institution's web site and at various locations throughout the campus, and must be included in publications of general distribution that provide information to students and employees about the institution's services and policies. The notice should be available and easily accessible on an ongoing basis.

## **C. Prompt Investigation and Resolution**

### **1. Investigation**

Once an institution knows or reasonably should know of possible Sexual Misconduct, it must take immediate and appropriate action, in accordance with its internal procedures, to investigate or otherwise determine what occurred. This obligation applies to Sexual Misconduct covered by this Policy regardless of where the Sexual Misconduct allegedly occurred, regardless of whether a parallel law enforcement investigation or action is pending, and regardless of whether a formal complaint is filed.

### **2. Prompt Resolution**

If the institution determines that Sexual Misconduct has occurred, the institution must take prompt and effective steps to eliminate the Sexual Misconduct, prevent its recurrence, and address its effects.

- a. In this subsection, "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.
- b. There may be circumstances that prevent an institution from meeting the 60-day timeline. When an institution is unable to meet the 60-day timeline, the institution should document the reasons why it was unable to meet the 60-day timeline.

### **3. Notice of Outcome**

As permitted by law, the institution must notify the parties concurrently, in writing, about the outcome of the complaint and whether or not Sexual Misconduct was found to have occurred. The institution must also concurrently inform the parties of any change to the results or outcome that occurs before the results or outcome become final, and the institution must inform the parties when the results or outcome become final.

## **D. Policy & Procedures**

### **1. General**

- a. Each institution shall adopt and publish policies and procedures, as needed, that:
  - i. Prohibit Sexual Misconduct;
  - ii. Prohibit Retaliation against any individual who reports, testifies, assists, or participates in any manner in a Sexual Misconduct investigation, hearing, or proceeding;
  - iii. Maintain employee and student procedures that provide for the prompt and equitable reporting, investigation, and adjudication of Sexual Misconduct and/or Retaliation cases;
  - iv. Require prompt Interim Measures be implemented, as necessary, to protect the parties during the investigation and adjudication processes;
  - v. Apprise the institution community of various USM institution resources and education programs, as well as other community resources and programs, geared to promote the awareness of and eliminate Sexual Misconduct, prevent its recurrence; and, as appropriate, remedy its effects; and
  - vi. Are easily understood, easily located, and widely distributed.
- b. Each institution shall ensure that Sexual Misconduct cases undergo an appropriate legal sufficiency review by counsel prior to any decision.

### **2. Required Content**

At a minimum, policies and procedures must:

- a. Include a statement prohibiting Sexual Misconduct and Retaliation;
- b. Define Consent, Dating Violence, Domestic Violence, Retaliation, Sexual Harassment, Sexual Exploitation, Sexual Intimidation, Sexual Misconduct, Stalking, and Sexual Violence;

- c. Identify Responsible Employees required to report any knowledge of Sexual Misconduct to the Title IX Coordinator;
- d. Identify confidential and non-confidential medical, counseling and advocacy resources on and off campus to assist individuals affected by Sexual Misconduct, including sexual assault centers, victim advocacy offices, women's centers, and health centers;
- e. Identify options and procedures for immediate and ongoing assistance following an incident of Sexual Misconduct, including encouragement to obtain immediate medical help and notify law enforcement as appropriate (especially to receive guidance in the preservation of evidence needed for proof of criminal assaults and the apprehension and prosecution of assailants), institution resources available to help obtain such medical or law enforcement assistance, and available Interim Measures; and
- f. Detail the following:
  - i. Identify who can file a complaint of Sexual Misconduct with the institution (to include students, institution employees, and third parties);
  - ii. Explain how to file a complaint;
  - iii. Identify to whom such complaints should be directed;
  - iv. Describe any institutional policies governing confidentiality;
  - v. Identify any USM or institution policies that may grant amnesty to a party or witness for a violation of drug, alcohol and other student conduct policies;
  - vi. Inform the parties about Interim Measures and how to request them. Each institution must provide notice, in writing, to the parties about options for, and available assistance in, obtaining no contact or protective orders, enforcing existing and lawful no contact or protective orders, and changing academic, transportation, residential, and working situations, if such an accommodation is reasonably available. The institution also must advise the parties of existing options for counseling, health, mental health, victim advocacy, legal assistance, and other services available on and off campus;

- vii. Explain the parties' options and rights, as well as institution responsibilities, regarding notification of law enforcement and campus authorities, as well as student conduct options;
- viii. Afford an investigative process and adjudicative process that provides the parties equal opportunity to present relevant witnesses and evidence throughout the process, and affords the parties similar and timely access to information to be used during any process;
- ix. Explain that the parties are entitled to the same opportunities to have others present during an institution disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an adviser of their choice, and explain the scope of any adviser's role or potential involvement;
- x. Specify "preponderance of the evidence" as the standard of review;
- xi. Identify the range of possible employment and student sanctions for those found responsible for Sexual Misconduct, up to and including suspension, dismissal, expulsion and termination of employment;
- xii. Provide an appeal process that is equally available to the parties;
- xiii. Require the institution, after a legal sufficiency review, to inform the parties, concurrently and in writing, as permitted by law, about the outcome of any investigation, adjudication, and appeal conducted under this policy;
- xiv. Designate reasonably prompt timeframes for the major stages of the process, and set forth the procedure for extending such timeframes, to include the timeframes within which (1) the institution will conduct a full investigation, (2) the parties will receive a notice of outcome, and (3) the parties may file an appeal;
- xv. Provide an affirmative statement to the institution community that the institution will take steps to prevent the occurrence of any Sexual Misconduct and remedy its discriminatory effects;

- xvi. Advise the community of institutional programs that endeavor to promote the awareness of Sexual Misconduct and prevent its occurrence; and
- xvii. Advise the community of external options for reporting Sexual Misconduct, including local law enforcement, the Equal Employment Opportunity Commission and the U.S. Department of Education Office for Civil Rights.

### **3. Prohibited Content**

Policies and procedures may not include any of the following content:

- a. Requirement that the parties attempt to resolve any Sexual Misconduct matter informally;
- b. Requirement for or allowance of mediation in Sexual Assault cases;
- c. Allowing a party to personally cross-examine the other party, if an institution allows cross-examination;
- d. Allowing or requiring the institution to wait until a concurrent law enforcement proceeding concludes to begin any Sexual Misconduct investigation, Interim Measures or adjudication;
- e. Allowing questioning or evidence about the complainant's sexual history with anyone other than the respondent during any adjudication proceeding (in a proceeding where such evidence or questioning may be appropriate); and
- f. Discouraging a reporter from notifying local law enforcement of alleged Sexual Misconduct.

### **III. Clery Act Compliance**

In handling Sexual Misconduct reports, each institution remains responsible for complying with the requirements of the Crime Awareness and Campus Security Act of 1990 ("Clery Act") and its amendments. Institutions must comply with Clery Act requirements, including crime recording and reporting requirements, where compliance is not otherwise reached by actions under this policy.

#### **IV. MOU with Local Law Enforcement**

Each institution must review any Memoranda of Understanding (“MOU”) with local police forces to ensure that the terms of any MOU allow the institution to meet its legal obligations.

#### **V. Training**

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

Each institution must develop and implement preventive education, directed toward both employees and students, to help reduce the occurrence of Sexual Misconduct. At a minimum, these educational initiatives must contain information regarding what constitutes Sexual Misconduct, definitions of consent and prohibited conduct, the institution’s procedures, bystander intervention, risk reduction, and the consequences of engaging in Sexual Misconduct. These educational initiatives shall be for all incoming students and new employees. Each institution also must develop ongoing prevention and awareness campaigns for all students and employees addressing, at a minimum, the same information.

##### **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 Team, Responsible Employees, law enforcement, pastors, counselors, health professionals, resident advisers, and complainant advocates, 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.

#### **VI. Record Keeping**

Each institution must 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.

#### **VII. Implementation**

Each Chief Executive Officer shall promptly communicate this policy and applicable procedures to his/her institutional community after the Board of Regents approves the policy. Each Chief Executive Officer also shall promptly identify his/her Title IX Coordinator and other designee(s), as appropriate for this policy. No later than December 31, 2014, each institution must develop procedures as necessary to implement this policy; and shall forward a copy of its Title IX designations and

procedures, and any subsequent changes in such designations and procedures, to the Chancellor.

Replacement for: USM Policy on Sexual Harassment (VI-1.20) and USM Policy on Sexual Assault (VI-1.30) in their entirety

Cross-reference with: USM Policy on the Reporting of Child Abuse & Neglect (VI-1.50)