

# Sexual Harassment Policy & Procedure

## Salisbury University

### I. Policy Statement

Salisbury University is committed to creating a safe work and learning environment of tolerance, civility and mutual respect. This policy is enacted to prohibit sexual harassment, including sexual violence, sexual discrimination and sexual exploitation; to establish a complaint procedure to investigate allegations of sexual harassment; and to provide appropriate sanctions for violators of this policy. Any action of retaliation against or interference with a witness, investigator or person who reports an alleged violation of this policy is strictly prohibited and will be subject to disciplinary action.

### II. Scope

This policy applies to the University Community, including all faculty, staff and students, as well as applicants for employment or applicants for admission to University programs, third-party vendors and contractors, and any person who serves as an agent of the University under the control of the University. Any employee in a supervisory<sup>1</sup> position who has knowledge that conduct involving Sexual Harassment or other Sexual Misconduct may have occurred must report and/or take action to address the matter immediately. Failure to report the behavior as provided in this policy may have serious legal implications for the employee and the University and may result in disciplinary action.

### III. Definitions

a. **Sexual Harassment.** There are generally two kinds of sexual harassment characterized by non-consensual, unwelcome sexual behavior whether between people of the same or different genders or sexual orientation.

i. **Quid Pro Quo.** Sexual harassment as a “bargain for exchange” includes unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature by one in a superior or authority position when submission to or rejection of the conduct by one person

1. is made either a term or condition, either explicitly or implicitly, of employment or academic standing, and

2. is used as the basis for employment or academic decisions affecting that person.

The key to this form of sexual harassment is the unequal power relationship between the accused and the victim. This authority relationship may take the direct form of a

<sup>1</sup> An employee is considered to be in a supervisory position if and only if s/he signs the annual evaluation (eg PMP, Faculty Evaluation) for at least one other employee.

supervisor and subordinate or a teacher and student, or indirectly such as when the harasser has the power to direct others who have power over the victim. Quid pro quo sexual harassment may be created in a single act.

**Examples** may include, but are not limited to, the request for sexual favors in exchange for a favorable grade in a present course, the expectation of a future reference or job evaluation, or condition of employment or participation in a University-sponsored program or activity.

- ii. **Environmental.** Unwelcome sexual advances, requests for sexual favors, and other **unwelcome** verbal and physical conduct of a sexual nature constitute environmental sexual harassment **if this conduct. In this manner, the conduct** is intended or **has** the effect of creating an intimidating, hostile or offensive environment that unreasonably interferes with the work, academic performance or privacy of the victim. Environmental sexual harassment is generally a persistent, severe and pervasive course of conduct that may cause emotional or psychological harm and/or cause relationships or the campus environment to become unpleasant, threatening and unproductive. Actual emotion or psychological harm is not required to be proven to trigger a violation of this policy and the law.

**Examples** may include, but are not limited to,

**Visual:** Displaying degrading sexual images whether in writing, telephone, electronically (e-mail, video or social media); offensive sexually oriented objects, pictures, cartoons, posters; or exposure of a person's body.

**Verbal:** Crude suggestive comments, conversations, sexual jokes, slurs, epithets, sexual comments about appearance, clothing, body, sexual orientation or sexual preferences or sexual relations.

**Non-verbal:** Making sexual gestures, staring or leering.

**Physical:** Physical contact of a sexual nature, touching, impeding or blocking movement that interferes with usual work or class movement, tools or possessions, sexual assault, attempted sexual assault or sexual violence.

**Comment [p1]:** CASE LAW IS CLEAR THAT IF THE OTHER PARTY LIKES IT THEN IT IS NOT ENVIRONMENTAL HARASSMENT. IN THEORY YOU COULD TALK DIRTY TO STUDENT ALL SEMESTER AND IF THEY MAKE CLAIM ONLY AFTER A BAD GRADE THEN IT IS NOT UNWELCOME. I WOULD NOT RECCO THIS BUT WANT YOU TO UNDERSTAND IT MUST BE UNWELCOME!

**Comment [p2]:** THERE MUST BE PROOF OF INTERFERENCE WITH WORK OR ACADEMIC PERFORMANCE. ONE CAN READ THE CLINTON SEXUAL HARASSMENT CASE WHERE HE SOLICITED SEX AS ARKANSAS GOV BUT WAS NOT FOUND TO HAVE INTERFERED WITH WOMAN'S EMPLOYMENT AS SHE KEPT GETTING PROMOTED. THUS, THIS IS NOT THE LEGAL DEFINITION. ALSO THE COURTS HAVE RECOGNIZED THAT A WORKPLACE IS NOT A KINDERGARTEN AND THAT SOME OF THIS CONDUCT OCCURS THAT IS NOT ILLEGAL.

**Comment [p3]:** NOTE THE WORDS PERSISTENT, SEVERE AND PERVASIVE

- b. **Sexual Violence.** Sexual violence is a form of sexual harassment that may include, but is not limited to, rape, non-consensual sodomy, sexual assault or sexual battery.
- c. **Sexual Contact.** Any intentional sexual touching, however slight, with any object, by a man or a woman upon a man or a woman.
- d. **Sexual Exploitation.** When one person takes non-consensual or abusive sexual advantage of another person for advantage or benefit of him/herself or for any person other than the victim.
- e. **Sexual Misconduct.** Generally and broadly encompasses any sexual harassment, sexual assault, sexual battery, sexual violence, sexual exploitation, or other illegal or inappropriate conduct of a sexual nature. – **as defined in Section III (a) –(e) above.**
- f. **Consent.** Consent is active words or actions that create mutually understood and voluntary permission. Silence alone is not sufficient. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Likewise, previous relationships or previous consent does not imply consent to future sexual interaction. Consent is attained neither with use of physical force, threats or coercion, nor when a victim is incapable of giving consent due to mental or physical incapacitation due to, for example, excessive alcohol, drugs, lack of consciousness or mental disability.
- g. **Coercion.** Unreasonable pressure in an effort to obtain consent for sexual activity. Coercion arises after the victim clearly communicates, verbally or nonverbally, intent to stop or refrain from sexual activity.
- h. **Student.** Students are broadly defined to include all people taking University courses, whether full time or part time, online, in person in practicum, internship or study abroad, pursuing undergraduate, graduate, professional, certificate or continuing studies.
- i. **University Community.** The University Community is broadly defined to include all University administrators, faculty, staff, students, alumni, volunteers, **Salisbury University Foundation Board members and employees, donors,** and **other** ~~some~~ third parties, such as contractors hired by the University or agents under contract with and acting on behalf of the University.

**Comment [kms4]:** This needs to be restricted so that this policy does not end up being used against someone who has a secretary or student look after a child for a few minutes while they are in class or a meeting....whether or not you think that is abuse, this is not the place to address it.

#### IV. Procedures

##### a. Reporting Requirement.

- i. **Responsible Reporting Office/Officer.** Any member of the University Community who feels he/she may be a victim of sexual

harassment should seek assistance and report the inappropriate behavior to the following responsible University offices/officers and/or to anyone in a position of responsibility with whom they feel comfortable. The report may be initially communicated orally, but must be presented in writing before any review may commence. Any member of the University Community may report to the Fair Practices Officer/Title IX Coordinator. Students may alternatively choose to report to the Dean of Students/Deputy Title IX Coordinator. Faculty and staff (other than University Police) may alternatively choose to report to the Associate Vice President of Human Resources/Deputy Title IX Coordinator. University Police may report to the Chief of Police or his/her supervisor if the Chief is the subject of the allegations.

1. Fair Practices Officer/Title IX Coordinator (FPO): Insert new hire here.

2. Deputy Title IX Coordinators:

a. Dean of Students, Ed Cowell, Guerrieri University Center, Room 212, 410-543-6080, eacowell@salisbury.edu

b. Associate Vice President for Human Resources, Marvin Pyles, Holloway Hall Room 157, 410-543-6035, mlpyles@salisbury.edu

3. University Police. In compliance with state law and police department policies and procedures, complaints against a sworn police officer will be handled as an internal police investigation. The University Police Department will notify the FPO and general counsel of any such investigation and its outcome.

ii. **Employees.** In the event an employee reports an alleged violation of this policy to a supervisor, department head, dean, chair or any other administrator in the employee's direct line of supervision, that person shall promptly refer the complaint to the FPO. The FPO will then notify the person who initiated the complaint ("Complainant") about the policy prohibiting Sexual Harassment and the procedures for filing a complaint. The only exception to this provision regards University Police employees as identified above in section IV.a.i.3.

iii. **Students.** In the event a student reports an alleged violation of this policy to a University employee, that employee shall promptly refer the Complainant to the Dean of Students, or the matter may

be referred to the FPO if the matter involves a faculty or staff member. Student complaints against another student will be pursued under the Student Code of Conduct. Student complaints against any other individual will be pursued under this policy.

- b. **Retaliation Prohibited.** This policy seeks to encourage the University Community to express freely, responsibly and without fear of retaliation any opinions and feelings about any problem or complaint of sexual harassment or ~~violence~~ **sexual violence**. Any act of reprisal, including, ~~internal interference~~, coercion, restraint, adverse academic or employment action by a University employee, student or by someone acting on behalf of the University **or any other action deliberately intended to harm the accuser**, is a violation of this policy and will result in appropriate disciplinary action.

Comment [p5]: THIS IS NOT A VIOLENCE POLICY BUT A SH POLICY

Comment [A6]: Internal interference was too vague. We thought this would cover it.

- c. **Good Faith Requirement.** Allegations of sexual harassment and other sexual misconduct are very serious and could cause great harm. This policy shall not be used to bring frivolous or malicious complaints against a member of the University Community. Disciplinary action may be taken against any person who files a complaint under this policy in bad faith or without justification.

- d. **Confidentiality.** Information generated in the course of reviewing a complaint filed in accordance with this policy will be afforded confidentiality to the extent permitted by law regarding employee personnel records and student education records. **For any matter where this confidentiality clause applies, the University will notify those covered in writing that they must maintain confidentiality.** Any person who, without authorization, fails to exercise due care and reveals such information may be subject to disciplinary action. Any information shared in the course of the investigation and resolution of a complaint will be on a “need-to-know” basis. In any event, the accused person will be informed of the relevant details regarding the complaint in order to be able to properly respond to the allegations. The University is obligated to investigate all allegations that may be prohibited sexual harassment under this policy; therefore, absolute confidentiality cannot be guaranteed.

- e. **Scope of Review.** In determining whether the alleged conduct constitutes Sexual Harassment, the University will look at the record **of the particular complaint** as a whole and the totality of the **circumstances of the complaint**, including, but not limited to, the nature of the sexual behavior, the particular facts of the case, the nature of the relationship between the parties and the context in which the alleged conduct occurred. **The University may also consider the prior year conduct of the parties in making any determination.** To determine whether the alleged conduct is prohibited by this policy, the standard shall be from the perspective of

“a reasonable person within the University Community.” Common sense and reason shall guide the official reviewing the case.

The University **fully supports** ~~is mindful of~~ the principles of academic freedom and is committed to protecting the free expression of ideas, teaching methods and course content in the academic setting. At the same time, faculty members may not engage in classroom behavior that is Sexual Harassment, as that term is defined and prohibited by this policy. Academic freedom **protects the use of** ~~is defined as, in part,~~ verbal or visual environmental factors that are germane to the course material and not directed at any individual in the University Community, and is not prohibited by this policy. This may include, but is not limited to, reading and discussing a piece of literature depicting scenes of a graphic sexual nature, discussing social issues involving sexuality or sexual conduct, even if such discussion includes graphic references or visual aides, or frank and graphic discussion of the biology of human sexuality.

**Comment [kms7]:** This is NOT a definition or any part of a definition of academic freedom but falls under the auspices of it.

The required standard of proof in Sexual Harassment and other Sexual Misconduct cases is “preponderance of the evidence.” **that the conduct set forth in Section III (a) to (e) has occurred.** Preponderance of the evidence means that the information and facts establish it is “more likely than not” that the alleged Sexual Harassment or Sexual Misconduct occurred. **as defined in this policy.**

**f. Duties of the Official Receiving a Complaint.** Compliance with federal law requires the University, through its Title IX Coordinators, to (1) provide prompt and equitable resolution of complaints of sexual harassment, (2) end the harassment and prevent its recurrence, ~~and~~ (3) remedy any effects of the harassment on the Complainant **4) protection of the rights of those accused of the harassment.** The official who receives a complaint under this policy must do the following:

- i. Advise the Complainant of the meaning and importance of this policy, the seriousness of the complaint, the penalties for making improper complaints, and the University’s commitment to prevent retaliation.
- ii. Make written notes of the allegations.
- iii. Explain the options for handling the complaint, document the Complainant’s choice and explain that the complaint must be received in writing before a review or any other action can begin.
- iv. Advise the Complainant of the University’s policy on confidentiality.
- v. Notify the Office of General Counsel, in writing, of the Complainant, of the advice given to the Complainant and the option chosen by the Complainant.

g. **Complaint Procedures.** The University is committed to take all appropriate action as promptly as possible against individuals who violate this policy, including interim or emergency action, pending the outcome of an investigation. Interim protective action may include changing academic or living arrangements for students, changing office responsibilities or location for employees, and prohibiting the alleged offender from having contact with the Complainant pending results of the investigation. Complainants may choose among informal or formal campus administrative procedures for alleged violations of this policy.

i. **Informal Complaint Procedure.** Some Sexual Harassment complaints may be handled by informal procedures. The informal complaint process is intended to be a flexible process allowing each case to be handled according to the facts presented and the preferences of the parties. **Due to the severity of these allegations, and the potential for abuse, particularly against Faculty, this process must be cognizant of academic blackmail and other conduct directed against faculty.** ~~In some cases, informing the offender that the behavior is unwelcome and needs to stop immediately may be enough to stop the behavior.~~ Whenever possible and safe, the University encourages, but does not require, students and employees to first discuss any problem with the individual involved in the complaint.

**Comment [A8]:** If this worked, then the policy probably did not even come into question. Given that, we do not feel this adds to the clarity.

Faculty, exempt, nonexempt and contingent employees, and students should feel free to informally raise a concern about any form of Sexual Harassment to any person in a position to advise them and with whom they feel comfortable. For example, these persons could include a faculty member, dean, department chair or director, the Associate Vice President for Human Resources, the Fair Practices Officer (FPO), the Provost, or another University administrator. Upon notification of any informal complaint of Sexual Harassment, University personnel set forth herein must immediately notify the FPO in writing within twenty-four (24) hours of receiving such complaint. The University personnel approached by a student, faculty or staff member for an informal complaint should take notes to document the conversation, even if the Complainant objects, and should forward those notes to the FPO and the respondent as part of the notification. **Any legally recognized privileged communication (eg. Attorney/client; Doctor/Patient; Spouse/spouse) is exempt from this requirement.** The Complainant and the FPO will thereafter work together to decide additional steps necessary to resolve the complaint, and in appropriate instances, a complaint may be resolved informally.

**Comment [A9]:** Files should not accumulate on individuals without their knowledge. It would be possible without this for an individual to accumulate damaging precedents without his or her knowledge and without the opportunity to alter the behavior that is causing it before more drastic measures are taken.

Informal complaints may be resolved by one of the following:

- 286 1. A decision to stop further action on the informal complaint.
- 287 2. A resolution of the informal complaint by agreement of the
- 288 parties and with approval of the FPO.
- 289 3. Initiation of the formal complaint process.

290 Possible resolutions by agreement of the parties may include, but is

291 not limited to **solely agreeing to cease and desist from conduct**

292 **claimed to be “unwelcome”**, an apology by the Respondent to

293 the Complainant and a commitment to stop the harassment; **an**

294 **apology from the Complainant to the Respondent for abuse of**

295 **the policy**, providing the Respondent with assistance to better

296 understand the effects of his/her conduct and ways in which this

297 behavior could be changed; participation in educational programs

298 about Sexual Harassment; verbal or written reprimands; and/or

299 other interventions or actions aimed at ending the misconduct.

300 They will also include appropriate remedies for the victim and the

301 University Community.

**Comment [A10]:** Sometimes this may be enough.

**Comment [A11]:** The policy should not assume the accused is guilty.

302 In some cases, informal resolution may not be appropriate and it

303 may be necessary to refer the complaint formally to the University

304 for resolution despite possible Complainant objection. For

305 example, informal resolution in the form of mediation will **not** be

306 used to resolve Sexual Assault/Sexual Violence complaints. Still,

307 Sexual Assault/Sexual Violence complaints can be resolved

308 informally where the accused individual is willing to accept

309 responsibility without a hearing. A Complainant may end the

310 informal process at any time and may initiate the formal process as

311 provided herein. The University will take steps to ensure

312 confidentiality of the Complainant and Respondent during any

313 informal complaint procedure to the fullest extent possible and to

314 the extent maintenance of confidentiality does not interfere with

315 the University’s obligation to address allegations of Sexual

316 Harassment.

- 317 ii. **Formal Complaint Procedure.** A person wishing to initiate a
- 318 formal complaint shall file his/her complaint in writing or in
- 319 person with the FPO as promptly as possible to permit the
- 320 University to accurately investigate the allegations and
- 321 appropriately remedy any violation(s). Generally, complaints
- 322 should be made within six (6) months of the conduct at issue;
- 323 however, the University reserves the discretion to investigate
- 324 complaints brought at a later date in light of the facts and
- 325 circumstances of the particular case and whether there is sufficient
- 326 reason to extend the filing period. In any event, the University will
- 327 review all complaints in compliance with this policy and



procedure. 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, and the remedy requested. If the complaint is not available in writing, the FPO may document the Complainant's statements and obtain the Complainant's signature on those notes to signify that the Complainant agrees with the description of the alleged harassment as recounted by the FPO. 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 FPO may go forward with the procedure as required to address the allegations in an effort to end the harassment, prevent its recurrence, and remedy its effects on the Complainant and the University Community. The Respondent, the person accused in the complaint, shall be notified of the complaint by the FPO and will be invited to submit a written response to the FPO within ~~fifteen five~~ (15) business days of receiving the notification. The FPO shall also notify the Associate Vice President for Human Resources in the event of employee involvement and the Dean of Students in the event of student involvement in a complaint for sexual harassment.

**Comment [A12]:** If you are blindsided by an accusation, the expectation of a well written response within less than this is unreasonable. The accused is at a severe disadvantage if this remains five days.

Upon receipt of the written complaint, the FPO shall begin a ~~neutral~~ investigation into the claims or appoint one or more investigators from the ~~trained pool of faculty and staff~~ **board, as described in h. i. below**, to investigate the claims under the FPO's guidance and supervision. **During the investigation, the FPO or designee is not permitted to discuss this investigation with administrators except to the extent they are witnesses or otherwise involved in the determination of the merits of this case to ensure that a fair and unbiased investigation is conducted. University or other counsels are exempted from this requirement.** 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 investigator(s). The FPO and/or investigator(s) shall make every effort to keep the investigation confidential, **although this cannot be guaranteed**, and all participants in the investigation shall be subject to ~~confidentiality requirement~~ **the requirement that all parts of the investigation remain confidential. Breach of confidentiality by a board member will result in permanent removal from the board.** The FPO may assist to initiate interim measures to address the allegations, as appropriate, while the investigation is pending. Examples of interim measures that may

**Comment [A13]:** We request examples of how this might not be able to be guaranteed be inserted here. Or as a footnote...

**Comment [kms14]:** This is for clarity of what is meant by the confidentiality requirement and to put some teeth into it.

be taken include, but are not limited to, changing a student's schedule or requesting an employee's temporary reassignment. The proceedings shall be transcribed, recorded or otherwise preserved in order to make a right of appeal meaningful.

The Complainant and Respondent may each choose an advocate from the University community who is not **acting as** an attorney to accompany, support and assist him/her. The advocate may sit in the hearing, ~~but may not actively participate in the hearing, though s/he may quietly communicate with the person for whom s/he is advocating as needed.~~ If the party who has chosen the advocate wishes, the advocate may communicate **directly to the committee any concerns or questions that arise.** This advisor/advocate is bound by the same requirements of confidentiality as are the other parties to an investigation or hearing.

The FPO or investigator(s) shall complete the investigation within sixty (60) days of receiving the Complaint. If the investigation cannot be completed within that timeframe, the reasons for delay should be noted in writing for the file and copied to the Complainant and the Respondent. Investigators appointed by the FPO will work closely with the FPO during the investigation and make recommendations to the FPO, who will make the final decision, **without discussion with other University Administration, -regarding the findings of and fact and** recommend the sanctions, **if any.** The standard for making the final decision shall be a preponderance of evidence, i.e., it is more likely than not that the sexual harassment/violence occurred. **-as that conduct is specifically defined in Section III (a) – (e) above.**

A written decision shall be prepared by the investigators and/or the FPO at the conclusion of the investigation, setting forth (1) a statement of the findings **of fact** concerning the alleged events; (2) **in cases of a finding of a violation of quid pro quo sexual harassment a finding as to the "bargain for exchange"** (3) **in cases of Environmental Harassment a specific finding supported by facts of a "persistent, severe, or pervasive conduct" and that such conduct was "unwelcome"** (4) **identification of all credibility resolutions made by the investigator, the party who was favored in such credibility resolution, and the specific facts in support of the credibility resolution** ~~2(5)~~ a statement of the conclusion that a violation of University policy did or did not occur; ~~(63)~~ a recommendation of a sanction(s), if applicable; and ~~(74)~~ notification of right to appeal.

**Comment [A15]:** Employees who happen to have law degrees should not be prevented from participating fully in the community.

**Comment [kms16]:** These situations tend to be emotionally trying on both parties, accused and accuser. It may not always be possible for the individual directly involved to be calm enough to communicate effectively. We see no reason why s/he should not be allowed to let someone else speak for her/him.

The possible sanctions - include, but are not limited to, a letter of reprimand, a letter of apology, service to the University, counseling, demotion or suspension, termination of employment, or expulsion from the University. **Sanctions imposed upon faculty are also subject to USM regulations with respect to tenure.** These sanctions may be imposed even after a first offense, under appropriate circumstances. This written decision shall be provided to the Complainant, Respondent and the appropriate Vice President in the Respondent's reporting line when it is finalized.

iii. **Other Violations.**

1. **No Written Complaint by the alleged victim.** The University may be limited in its ability to pursue an investigation without the continuous cooperation of an **alleged victim Complainant.** Nevertheless, even if an **alleged victim Complainant** chooses not to formally pursue the complaint process, the University reserves the right to investigate all complaints where necessary to protect the interests of the University or the Community. **In this case a member of the university community who believes that a violation of this policy has likely occurred may prepare a written complaint instead of the alleged victim and the university will proceed with this complaint. In the event that the complaint is written by the FPO, the FPO's role in remainder of the process will be fulfilled by the Assoc Vice President of Admin & Finance for Human Resources. SU may proceed with a review of a reported complaint, make efforts to eliminate effects of the alleged harassment and prevent its recurrence. If, in the absence of a complaint and after thorough investigation, the FPO finds the alleged activity constitutes a violation of this policy, the Vice President for that unit shall notify an employee and Vice President for Student Affairs shall notify a student of such violation(s) in writing, including the sanction(s), if any, to be imposed and notification of right to appeal.**

**Comment [A17]:** We do not want witch trials. If there is going to be an investigation there should be a written complaint on file even if the alleged victim is unwilling to go on record. Clearly the FPO cannot serve as prosecutor, judge, and jury....

2. **Patterns.** The FPO shall be responsible to identify **documented** policies, practices or patterns of behavior that exhibit prohibited Sexual Harassment under this policy. The FPO shall report these observations and findings to the appropriate unit officials and recommend appropriate action to eliminate the alleged Sexual Harassment. In the event the FPO is unsuccessful, he/she may report the matter to the appropriate Vice President.

**Comment [kms18]:** This should not be a free pass to get rid of someone you don't like. Presumably the documentation will be available to anyone accused of being in violation.

h. **Right to Appeal.** The Complainant and the Respondent both have the right to appeal. There are two choices for appealing the decision. If either the Complainant or Respondent disagrees with any conclusion reached by the FPO, either the Complainant or the Respondent can appeal the FPO's decision by filing a written statement of appeal to the Vice President who was copied on the written decision. The appeal shall be received by the Vice President within ~~five (5)~~ **fifteen (15)** business days of the date of the FPO's written decision. The statement of appeal shall identify which conclusions are disputed as well as specify whether the appellant is requesting either (1) an appeal hearing or (2) an administrative appellate review by the appropriate Vice President in the Respondent's reporting line. A copy of the statement of appeal shall be sent to the FPO.

**Comment [kms19]:** Five business days does not allow time to read and react to the decision and write a well thought out appeal.

i. **Appeal Hearing.** If an appeal hearing is requested, the appropriate Vice President then shall appoint a hearing committee of three persons, one of whom shall be designated by the Vice President as the Presiding Officer within 10 business days. The committee members shall be chosen from a **board of at least 30 members of the university community including faculty and both exempt and non-exempt staff** of six or more members of the University Community who have received training on sexual harassment, investigation techniques, law and procedures applicable to this policy **or are otherwise qualified as experts in this area.** No member of the committee shall have been involved at any earlier stage of the process.

**Comment [kms20]:** We should collect a "board" of people appropriate to serve on these hearing and have procedures (see below) for how people get on the board. We want to avoid a kangaroo court. It is important to have fair procedures.

**To ensure a fair and impartial hearing, the following process shall apply:**

**From the list of those Board Members who are and available to serve for this hearing the University Counsel will use a random selection process agreed to by the parties to produce a panel of 10 possible members. Each party will then number the acceptability of that member with a 1 being a first choice etc. The panel will then be constituted based on the ranking with equal treatment given to both parties. The board will include all employees who have volunteered to go through the appropriate training or who have prior expertise, volunteer to serve, have no history of being involved as advocates, accusers or accused in complaints within the last ten years and have signed a strict confidentiality agreement. Membership of the board will be a matter of public record within the university.**

Efforts should be made to ensure that the Respondent has an appropriate peer on the appeal hearing committee, e.g., a tenured faculty member when the appellant is a tenured faculty member.  
**The Vice President shall advise the parties of the identities of**

the committee members in writing. If either party has a reason to challenge the appointment of any member to the committee hearing the case, s/he shall notify the Vice President in writing as soon as possible, but in no event later than three (3) business days of the Vice President's written notification. The Vice President shall make the final decision on the makeup of the Committee. This Hearing may only address the issue of preponderance of evidence and other challenges to the investigation.

A hearing shall be conducted within ten (10) business days. The Presiding Officer shall be in charge of organizing the hearing. S/He shall make all reasonable efforts to schedule the hearing at such time that the Complainant and the Respondent can both be present. The Presiding Officer shall contact potential witnesses and arrange for their appearance at the hearing. Notice of the hearing shall be given at least five (5) business days in advance of the scheduled hearing.

The Presiding Officer may focus the hearing so that it concerns only those aspects of the decision about which the parties disagree. The decision of the FPO shall be offered into evidence at the hearing, and is entitled to a presumption of correctness. The Complainant and Respondent may each choose an advocate from the University Community who is not acting as an attorney to accompany, support and assist him/her. The advocate may sit in the hearing. If the party who has chosen the advocate wishes, the advocate may communicate directly to the committee any concerns or questions that arise. This advisor/advocate is bound by the same requirements of confidentiality as are the other parties to an investigation or hearing. The Complainant and Respondent may each choose an advocate from the University community who is not an attorney to accompany, support and assist them. The advocate may sit in the hearing, but may not actively participate in the hearing, though s/he may quietly communicate with the person for whom s/he is advocating as needed. This advisor/advocate is bound by the same requirements of confidentiality as are the other parties to an investigation or hearing. If the Committee requests legal assistance, the University's General Counsel may be present at the hearing to provide advice related only to procedural questions during the hearing.

The questioning of the Complainant, the Respondent and the FPO shall be conducted by the Committee and should be directly related to the issue being disputed as described in the request for appeal or

**Comment [p21]:** There is no point in having an appeal if the previous decision is assumed to be correct. This is NOT according due process.

**Comment [kms22]:** This should be consistent with the paragraph earlier in the document (with our modifications) with regard to the formal process.

551 as necessary to ensure a fair decision and due process. The  
552 Complainant may not be cross examined. **However, the**  
553 **respondent may address questions to the committee that the**  
554 **committee may then ask the complainant.** The Presiding Officer  
555 may exclude irrelevant, repetitious, or unduly prejudicial evidence.  
556 The Presiding Officer shall be in charge of gathering the  
557 documentary evidence that is presented at the hearing, **audio**  
558 **recording the hearing,** and transmitting ~~it everything involved~~ to  
559 the FPO after the Committee no longer needs it, so that a record is  
560 created. ~~The hearing should be recorded and the recording entered~~  
561 ~~into the record.~~ **A record is thus created and shall remain**  
562 **available to all parties for review.**

Comment [kms23]: The accused has to have some room to defend him/herself.

Comment [kms24]: Saying that the hearing should be recorded gives no one responsibility for seeing that it is.

563 Within ten (10) business days of the conclusion of the hearing, the  
564 hearing committee shall issue a written report to the appropriate  
565 Vice President containing its findings, conclusions and  
566 recommendations on the matter. The written report shall be  
567 provided to the Complainant, Respondent and FPO.

568 Within ten (10) business days of receiving the report, the  
569 appropriate Vice President shall issue a written decision. The Vice  
570 President may accept, reject or modify the findings and proposed  
571 sanction(s) recommended by the hearing committee. The Vice  
572 President's decision shall be mailed to the Complainant, the  
573 Respondent, the FPO and the members of the hearing committee.  
574 The Vice President's decision is final; there is no right to appeal  
575 this decision. **The Vice-President is required to set forth the**  
576 **rationale for the decision and to certify that it this was his or**  
577 **her decision, that he or she had not previously been involved in**  
578 **any investigation or other process where he or she had**  
579 **previously offered an opinion on the matter or discussed what**  
580 **the outcome should be. Alternatively, the Vice-President can**  
581 **elect to identify the person or persons consulted outside of the**  
582 **process prior to making the decision. If the Vice-President was**  
583 **previously involved to a degree that represents a conflict of**  
584 **interest, the President shall render the final decision.**

Comment [kms25]: The process should not include secret discussions, etc. The Vice President could have a conflict of interest and there should be a back-up plan.

- 585 ii. **Administrative Appeal Review.** Instead of opting for a hearing,  
586 either the Complainant or the Respondent can appeal the decision  
587 of the FPO by filing a written statement of appeal with the  
588 appropriate Vice President within ~~five (5)~~ **fifteen (15)** business  
589 days of the FPO's decision. The Vice President will have full  
590 discretion to address the issues of the appeal as s/he sees fit. The  
591 Vice President shall issue a written decision and shall convey it to  
592 the Complainant, the Respondent and the FPO within ten (10)  
593 business days. The Vice President's decision is final; there is no  
594 right to appeal this decision.

iii. **Final Decision Absent An Appeal.** If neither the Complainant nor the Respondent requests an appeal in writing within five (5) **fifteen (15)** business days following notification of the FPO's written decision, the FPO's decision is final.

i. **Sanction.** The Vice President can accept and issue the sanction(s) as recommended by the FPO or may modify the sanction(s) as s/he deems appropriate. **All sanctions must be consistent with USM policies. In particular, any sanctions involving loss of employment or loss of compensation for tenured faculty must be consistent with the USM guidelines for removing tenured faculty.** The Vice President should issue the sanction(s) and copy only the FPO, the Associate Vice President for Human Resources and the Respondent's direct supervisors. Every Complainant has the right to know the outcome of a complaint. However, in cases in which a faculty member or a staff member receives a sanction(s), the Complainant will not be notified of the final sanction; this is a confidential personnel action. In cases that involve a student grievance, the Complainant has a right to know.

**Comment [kms26]:** We do not want this policy to be a backdoor to circumventing protections earned by tenured faculty.

j. **Disciplinary Penalties.** Violations of this policy are subject to disciplinary action up to and including dismissal from the University. Disciplinary employment action and student conduct action will be addressed on a case-by-case basis dependent on the facts of each situation, the extent of harm to the individuals involved, and whether and to what extent the accused has a history of documented previous wrongdoing. Penalties will be assessed according to regulations governing student conduct and employment relationships as enumerated in the Student Code of Conduct, Faculty Handbook and Policy Manual for Employees. **All sanctions must be consistent with USM policies. In particular, any sanctions involving loss of employment or loss of compensation for tenured faculty must be consistent with the USM guidelines for removing tenured faculty.**

## V. **Training.**

a. **Employees.** The University shall require all University employees likely to witness or receive reports of Sexual Harassment and Violence including, but not limited to, faculty, University Police, administrators, counselors, grievance investigators and adjudicators, general counsel, student health personnel, coaches, residence life staff, any employee who regularly interacts with students, and employees who serve in a supervisory capacity to participate in Sexual Harassment training on a routine, ongoing basis, but in no event less frequently than annually. The training should include how to recognize and report Sexual Harassment and Violence. **To maximize Faculty productivity, Faculty who claim to be experts in this field or to have had training elsewhere may apply to their Dean for an exemption from this training which, after**



**consultation with the FPO, will not be unreasonably denied.** The Title IX Coordinator is responsible for making Sexual Harassment prevention education available to the University Community.

- b. **Students.** The Dean of Students/Deputy Title IX Officer is responsible for developing, coordinating and/or providing consultation on Sexual Harassment education and training, and prevention reporting and procedures to Students on a routine ongoing basis. Programs will be presented for Students at least four (4) times per year to promote awareness and risk reduction. Sexual Harassment, Violence and Sexual Assault education information shall be presented annually. The University System of Maryland and Salisbury University policies and educational materials shall be distributed during these programs.

**VI. External Filing Procedures.** While there is no further appeal from the Vice President's decision provided under this Policy, regular employees and tenured and tenure-track faculty may have additional rights to challenge the sanctions of suspension and termination pursuant to University policy or State law. Further information on these rights may be obtained from the Office of Human Resources for employees and the Office of the Provost for faculty. Employees, but not students, may choose to pursue a formal complaint of discriminatory harassment under the State-wide anti-discrimination policy applicable to all regular State employees. **If this choice is made, it is an alternative to the use of the University process for handling harassment complaints and not an additional avenue of complaint.**

The FPO shall ensure that each Complainant is informed of his/her right to file the complaint with the appropriate State and Federal agencies. In the event a Complainant files an external complaint with a State or Federal agency, the Complainant is responsible for contacting that agency to determine and comply with any filing requirements or time limitations.

- a. **Employees.** Employees who wish to file a formal complaint with an external agency may contact any of the following offices:

- i. The Equal Employment Opportunity Commission (EEOC), 1801 L Street, N.W., Washington, DC 20507 [put in phone number www.eeoc.gov](#)
- ii. The Equal Employment Opportunity Commission (EEOC), 10 Howard Street, Third Floor, Baltimore, Maryland 21201 [put in phone number www.eeoc.gov](#)
- iii. Maryland Commission on Human Relations, 20 East Franklin Street, Baltimore, Maryland 21202 [put in phone and url](#)



iv. United States Department of Education, Office for Civil Rights,  
3535 Market Street, Room 6300, Philadelphia, Pennsylvania  
19104-3326 [put in phone and url](#)

b. **Students.** Students who wish to file a formal complaint with an external  
agency may contact the United States Department of Education, Office for  
Civil Rights, 3535 Market Street, Room 6300, Philadelphia, Pennsylvania  
19104-3326. [Put in phone and url](#)

**Related Policies:**

**USM Sexual Harassment Policy VI-1.20**

**USM Sexual Assault Policy VI-1.30**

**USM Non-Discrimination Policy VI-1.05**

**USM Policy on Violence and Extremism VI-1.10**

**USM Policy on the Reporting of Suspected Child Abuse and Neglect VI-1.50**

**Policy and Procedures approved by Dr. Janet Dudley-Eshbach, President:  
April 11, 2001**

**Updated: December 22, 2008**

**February 23, 2009**

**May 23, 2012**

**Draft submitted by the Faculty Welfare Committee  
October 2012**

**Please note that since the policy has already been implemented, the Faculty  
Welfare Committee chose to make concrete recommendations for changes sooner  
rather than later and reserves the right to return to the senate with additional  
concerns at a later meeting.**

**We also ask that the university attorney draft language pursuant to  
suspending the procedures in the policy when a criminal investigation ensues.**