

Board of Trustees
Executive Committee Meeting

August 13, 2020
11:00 AM – 12:00 PM
Zoom Meeting

The public is invited to view the meeting on YouTube. The link to the Board of Trustees YouTube page can be found the Board website: <https://www.maine.edu/board-of-trustees/>

AGENDA

Executive Session

The Executive Committee will go directly into Executive Session.

Following the Executive Session, the public meeting will be reconvened to vote on the following item:

TAB 1 **UMS Title IX Policy Revision**

Action items within the Committee purview are noted in green.

Items for Committee decisions and recommendations are noted in red.

Note: Times are estimated based upon the anticipated length for presentation or discussion of a particular topic.

An item may be brought up earlier or the order of items changed for effective deliberation of matters before the Committee.



AGENDA ITEM SUMMARY

1. **NAME OF ITEM:** UMS Title IX Policy Revision
2. **INITIATED BY:** James R. Erwin, Chair
3. **BOARD INFORMATION:** **BOARD ACTION:** X
4. **OUTCOME:** **BOARD POLICY:**
 Primary Outcomes:
 Student Success
 Enhance fiscal positioning
*402 Sex Discrimination, Sexual Harassment,
Sexual Assault, Relationship Violence,
Stalking and Retaliation*
5. **BACKGROUND:**
 In early May 2020 the U.S. Department of Education released long-awaited final regulations governing campus sexual assault under Title IX, the federal law prohibiting sex discrimination at federally funded institutions.

 U.S. colleges and universities that accept federal funding, as all UMS universities do, must come into compliance with the new regulations, which have the force of law, by August 14, 2020.

 The new regulations, which have been the subject of national controversy and even litigation, require substantial changes to UMS Title IX investigations and conduct hearing policies and practices, including at present UMS Board Policy 402, to come into compliance. UMS General Counsel, Title IX, and Student Affairs personnel reviewed the regulations and prepared necessary revisions to UMS Board Policy 402 to ensure UMS is in compliance with the Title IX regulations by August 14, 2020.

 The proposed policy changes will be explained by UMS General Counsel and Title IX staff, and the Board's Executive Committee is asked to adopt the policy changes as proposed, with the full Board ratifying the changes at its regularly-scheduled September 2020 meeting.
6. **TEXT OF PROPOSED RESOLUTION:**
 That the Executive Committee of the Board of Trustees, acting on the Board's behalf before its next regularly scheduled meeting, adopts the proposed revisions to Board Policy 402 to ensure UMS is in compliance with United States Department of Education Title IX regulations as of August 14, 2020. The Executive Committee recommends that the full Board ratify the Policy 402 revisions at its September 2020 meeting.

8/12/2020

THE UNIVERSITY OF MAINE SYSTEM
THE TITLE IX FINAL RULE – EFFECTIVE AUGUST 14, 2020
EXECUTIVE SUMMARY

I. Administrative Requirements

- Relation to Other Laws – Free Speech and Due Process Rights must be protected; Title IX takes precedence over FERPA; does not affect Title VII rights.
- Title IX Coordinator – UMS must designate and authorize one employee as the UMS “Title IX Coordinator.”
- Give notice of Title IX Coordinator’s contact information and Title IX Policy and Procedures to all applicants for admission and employment, students, employees, and all unions.
- Training – UMS must ensure that the Title IX Coordinator, Deputy Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive comprehensive training.
- Effective Date – August 14, 2020.

II. Definitions

- Only have to respond when UMS has actual knowledge.
- Complainant means an individual who is alleged to be the victim Title IX Sexual Harassment.
- Formal Complaint means a document filed and signed by a Complainant or signed by the Title IX Coordinator.
- Respondent means an individual who has been reported to be the perpetrator Title IX Sexual Harassment.
- Title IX Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following: 1) An employee of UMS conditioning the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct; 2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to UMS’s education program or activity; or 3) “Sexual assault,” “dating violence,” “domestic violence” or “stalking.”

III. UMS Response to Notice of Title IX Sexual Harassment

- When UMS has actual knowledge of Title IX Sexual Harassment, UMS must respond promptly in a manner that is not deliberately indifferent.
- Procedures - If the Complainant files a Formal Complaint or if the Title IX Coordinator signs a Formal Complaint, UMS must follow a grievance process that complies with the Final Rule.

IV. Informal Resolution

- UMS may not require informal resolution of a Title IX Sexual Harassment.
- UMS may not offer an informal resolution process unless a Formal Complaint is filed.
- UMS cannot use an informal resolution process to resolve an allegation that an employee sexually harassed a student.

V. Grievance Procedures - Before the Hearing

Notice - Upon receipt of a Formal Complaint, UMS must provide written notice to both parties of:

- Notice of UMS' grievance process that complies with the Final Rule;
- Notice of the allegations, including sufficient details;
- The identities of the parties involved in the incident, the conduct alleged, the date and location of the alleged incident;
- A statement that the Respondent is presumed not responsible for the alleged conduct;
- Notice that the parties may have an advisor of their choice and may inspect and review all evidence;
- Notice to the parties of any provision in UMS' code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process;

Mandatory Dismissal - UMS must investigate the allegations in a Formal Complaint. UMS must dismiss the Formal Complaint of Title IX Sexual Harassment if:

- The conduct alleged does not constitute Title IX Sexual Harassment;
- The conduct did not occur in UMS' education program or activity; or
- The conduct did not occur against a person in the United States.

Discretionary Dismissal - UMS may dismiss the Formal Complaint if:

- The Complainant withdraws the Formal Complaint;
- The Respondent is no longer enrolled at or employed by UMS; or
- Circumstances prevent UMS from gathering evidence sufficient to reach a determination.

Dismissal does not preclude action under another provision of UMS' policies or code of conduct. Upon a dismissal, UMS must promptly send written notice of the dismissal to the parties.

Consolidation - UMS may consolidate Formal Complaints as to allegations of Title IX Sexual Harassment where there is more than one Respondent or Complainant.

Investigation - When investigating a formal complaint and throughout the grievance process, UMS must:

- Ensure that the burden of proof always rests on UMS and not on the parties;
- Provide an equal opportunity for the parties to present witnesses and evidence;
- Not restrict the ability of either party to discuss the allegations;
- Provide the parties with the same opportunities to have an advisor present;
- Provide the parties with written notice of the date, time, location, participants, and purpose of all hearings, interviews, and meetings;
- Provide all evidence to each party and the party's advisor, and give them 10 days to submit a written response;
- Write an investigative report and give the parties and their advisors 10 days to provide a written response.

VI. Grievance Procedures – During the Hearing

- The Final Rule requires that the grievance process must provide for a live hearing;
- At the live hearing, each party's advisor may cross-examine the other party and any witnesses;
- The Hearing Chair gets to decide whether questions are relevant before they are answered;
- If a party or witness does not submit to cross-examination at the live hearing, all statements of that party or witness are excluded;
- The decision-maker(s), must issue a written determination regarding responsibility to both parties simultaneously.

VII. Grievance Procedures – After the Hearing

Appeals - Both parties have the right to an appeal from a determination regarding responsibility, and from any dismissal of a Formal Complaint, on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias.

Appeal Procedures - As to all appeals, UMS must:

- Notify the other party in writing when an appeal is filed;
- Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination, the investigator(s), or the Title IX Coordinator;
- Ensure that the decision-maker(s) for the appeal has received the required training;
- Give both parties a reasonable, equal opportunity to submit a written statement;
- Issue a written decision simultaneously to both parties describing the result of the appeal and the rationale for the result;
- Retaliation is prohibited.

**University of Maine System
Policy and Procedures**

**Sex Discrimination, Sexual Harassment,
Sexual Assault, Relationship Violence,
Stalking, Retaliation and Title IX Sexual
Harassment**

Draft 08/11/2020 with Highlighted Areas for Campus to Fill in

Table of Contents

I. Policy Statement 2

II. Overview 2

III. What to do if you are Sexually Assaulted or are the Victim of Domestic Violence, Dating Violence or Stalking 3

IV. Terms Used in this Policy 4

V. Consent 8

VI. How to File a Complaint and How the University Will Respond 8

VII. Confidentiality 12

VIII. Support Services 186

IX. Options Regarding Law Enforcement 187

X. Enforcement of Protection-from-Harassment or Protection-from-Abuse Orders 17

XI. Student Amnesty 18

XII. Free Speech and Academic Freedom 18

XIII. Off-Campus and Off-Duty Conduct 18

XIV. Educational Programs 19

XV. External Complaints 19

XVI. Title IX Sexual Harassment 20

XVII. Review and Revision of this Policy 24

****Please note: The reader will find highlighted sections within this document. These sections are specific to each campus; each campus will have a version of this policy that contains more detailed**

information specific to that campus. **Contact the Deputy Title IX Coordinator on the campus of interest for this information; or the UMS Coordinator of Title IX Services at titleix@maine.edu**

I. Policy Statement

The University of Maine System (“UMS” or “the University”) is committed to providing a safe environment which promotes the dignity and worth of each member of the community. In complying with the letter and spirit of applicable laws and in pursuing its own goals of diversity, the University does not discriminate on the basis of sex in employment, education, and all other programs and activities. UMS, inclusive of all its campuses and faculties, does not discriminate on the basis of sex, race, color, religion, age, disability, status as a veteran, national or ethnic origin, sexual orientation, transgender status, gender identity, gender expression, or any other category protected by applicable law, in the administration of its educational policies, admission policies, scholarship and loan programs, employment, or other school administered programs. For this reason, the University will not tolerate sex discrimination, sexual harassment, sexual assault, dating violence, domestic violence, stalking, or retaliation in any form. All conduct of this nature is considered a violation of this policy.

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This policy addresses discrimination on the basis of sex. UMS does not discriminate on the basis of sex in its education programs or activities, and UMS is required by Title IX of the Education Amendments of 1972, and the final Title IX regulations issued by the U.S. Department of Education’s Office for Civil Rights in May 2020, not to discriminate in such a manner. The requirement not to discriminate on the basis of sex in the education program or activity extends to admission and employment. Inquiries about the application of Title IX and its implementing regulations may be referred to the Title IX Coordinator, to the Assistant Secretary for Civil Rights, or both.

The University will respond to complaints and reports of violations of this policy in a prompt, fair, impartial and equitable manner. Regardless of whether a complaint is filed, the University will respond promptly and reasonably when it has notice of potential sexual misconduct that is covered by this policy. The University will take steps to end and prevent recurrence of violations of this policy and to correct their discriminatory effects on the complainant and others when a determination of responsibility has been made against a Respondent. In responding to all complaints and reports, the University will act to ensure the safety of students, guests, and employees while complying with state and federal laws and provisions of applicable collective bargaining agreements and employee handbooks.

II. Overview

This policy applies to all members of the University community, including but not limited to all students (graduate and undergraduate), all employees (including faculty and staff), adjunct faculty, contractors, vendors and/or other third parties. This policy applies to all individuals regardless of gender, sexual orientation, transgender status, gender identity, or gender expression. It applies to all

University programs and activities, both on campus and off campus, including, but not limited to, instruction, grading, housing, athletics, electronic communication and employment.

This policy does not substitute for or supersede related civil and criminal law. It is the policy of the University to strongly encourage individuals to report all incidents and violations to law enforcement officials or agencies with appropriate jurisdiction and to avail themselves of all the services and rights to which they are entitled.

Any individual may file a complaint under this policy at any time. However, the University strongly encourages individuals to file complaints promptly in order to preserve evidence for a potential legal or disciplinary proceeding. A delay in filing a complaint may compromise the subsequent investigation. Reporting in a timely way also allows the University to provide all persons involved with information regarding their rights, options, and resources available under this policy and federal or state laws.

All members of the University community are **encouraged** to cooperate fully in investigations and other proceedings necessary for the effective execution of this policy, **though no individual will be retaliated against for exercising their rights under this policy including their right not to participate in an investigation and/or adjudication process.**

This policy covers the following information:

- What to do if you are sexually assaulted or are the victim of domestic violence, dating violence or stalking;
- Common terms used in this policy;
- Consent;
- How and where to file a complaint;
- How the University will respond to a complaint;
- Confidentiality;
- **Supportive measures** that are available;
- Options regarding reporting to Law Enforcement;
- Protection orders;
- Student Amnesty;
- Free Speech and Academic Freedom;
- Off-campus conduct;
- Educational programs;
- External complaints;
- Review and revision of this policy.

III. What to do if you are Sexually Assaulted or Experience Domestic Violence, Dating Violence or Stalking

- Get to a safe location. If you are a student and are unsure where to go or can think of nowhere that is safe at this time, please consider calling your campus Public Safety or Security Department at XXX-XXXX and/or local law enforcement at 911. Campus Residence Life or Student Affairs staff can help with housing arrangements as well.
- Consider asking a trusted friend or relative to be with you for support.
- Seek medical care as soon as possible. You may need basic medical treatment for injuries, and you may have injuries of which you are unaware. You also may be at risk of acquiring a sexually transmitted infection, and women may be at risk for pregnancy. Trained staff at your campus Health Center or the local emergency room can speak with you about all of the medical options available and provide information about a sexual assault forensic examination.
- You may choose to file a report with the local law enforcement agency. Your report puts in place support systems that you may choose to use. The University will provide someone to assist you in filing a report with Law Enforcement if you wish.
- Preserve all evidence of the incident. If you choose to file a report with the police, it is important that you:
 - Do not bathe, wash your hands, brush your teeth, drink, eat, or even use the restroom—all these things can destroy evidence that may be helpful in a criminal investigation; however, if you have done any of these things since the incident, evidence can still be collected;
 - Do not clean or remove anything from the location where the incident occurred;
 - Write down as much as you can recall about the incident and the people involved.
- Seek some form of emotional support. While taking care of your physical needs may be the first step in taking care of yourself, it is important not to neglect the emotions you may be experiencing as a result of the assault, violence or stalking. University counseling services have employees who are specially trained to assist students with recovery and healing. CIGNA EAP services are available for employees at 1.877.622.4327.
- It is your choice to determine when and in what manner you recover from your trauma. Give yourself the time you need and know that it is never too late to get help.
- KNOW THAT WHAT HAPPENED WAS NOT YOUR FAULT AND YOU ARE NOT ALONE.
- For details about all of the available resources on your campus and in your community, see the campus brochure regarding sexual assault, dating violence, domestic violence and stalking located at (INSERT CAMPUS CONTACT)

IV. Terms Used in this Policy

Sexual Harassment includes two distinct, but overlapping definitions applicable to this policy. The Title IX Regulations define sexual harassment as set forth in Section XVI of this policy. Consistent with Title VII of the Civil Rights Act of 1964 and the recognition that Sexual Harassment may also occur in a wider variety of contexts, UMS defines Sexual Harassment as:

A. Sexual Harassment

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, including sexual assault and sexual violence. Sexual harassment, including sexual assault, can involve persons of the same or opposite sex. Consistent with the law, this policy prohibits two types of sexual harassment:

1. Tangible Employment or Educational Action (quid pro quo): This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University activity are made an explicit or implicit condition of submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting an individual's employment, education, living environment, or participation in a University program or activity. Generally, a person who engages in this type of sexual harassment is an agent or employee with some authority conferred by the University.
2. Hostile Environment: Sexual harassment that creates a hostile environment is based on sex and exists when the harassment:
 - i. Is subjectively and objectively offensive; and
 - ii. Is so severe or pervasive as to alter the conditions of a person's employment, education or living situation that it creates an abusive working, educational or living environment.

A hostile environment can be created by anyone involved in a University program or activity, such as an administrator, faculty or staff member, student, or campus guest. Offensiveness alone is not enough to create a hostile environment. Although repeated incidents increase the likelihood that a hostile environment has been created, a single serious incident, such as a sexual assault, can be sufficient.

Determining whether conduct creates a hostile environment depends not only on whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive. The following factors will also be considered:

- a. the frequency, nature and severity of the conduct;
- b. whether the conduct was physically threatening;
- c. the effect of the conduct on the Complainant's mental or emotional state;
- d. whether the conduct was directed at more than one person;
- e. whether the conduct arose in the context of other discriminatory conduct;
- f. whether the conduct altered the conditions of the Complainant's educational or work performance and/or UMS programs or activities;
- g. whether the conduct implicates academic freedom or protected speech; and,

h. other relevant factors that may arise from consideration of the reported facts and circumstances.

B. Sexual Assault

Sexual assault means an offense that meets the definition of rape, fondling, incest, or statutory rape.

Rape is the 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.

Fondling is 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 his/her age or because of his/her temporary or permanent mental incapacity.

Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory rape is sexual intercourse with a person who is under the statutory age of consent. All forms of [sexual assault](#) and sexual contact prohibited by Maine law are also included.

C. Dating Violence

Dating violence is violence committed against a person by an individual who is or has been in a social relationship of a romantic or intimate nature with that person. Whether a dating relationship exists is determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence. All forms of dating violence prohibited by Maine law are also included (see [Assault](#)).

D. Domestic Violence

A felony or misdemeanor crime of violence committed—

- (A) By a current or former spouse or intimate partner of the victim;
- (B) By a person with whom the victim shares a child in common;
- (C) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- (D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or

(E) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

All forms of domestic violence prohibited by Maine law are also included (see [Domestic Violence Assault](#), [Domestic Violence Criminal Threatening](#), [Domestic Violence Terrorizing](#), [Domestic Violence Stalking](#), and [Domestic Violence Reckless Conduct](#)).

E. Stalking

Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(A) Fear for the person's safety or the safety of others; or

(B) Suffer substantial emotional distress.

(ii) For the purposes of this definition—

(A) *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(B) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.

(C) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

All forms of stalking prohibited by Maine law are also included ([Stalking](#) and [Domestic Violence Stalking](#)).

F. Retaliation

Retaliation is action taken by the University or any individual or group against any person for opposing any practices forbidden under this policy or for filing a complaint, testifying, assisting, or participating in an investigation or proceeding under this policy. This includes action taken against a bystander who intervened to stop or attempt to stop a violation of this policy. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint, participation or non-participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy.

G. Sexual Misconduct

Sexual misconduct includes, but is not limited to, prostituting another person, nonconsensual image capturing of sexual activity, presentation or unauthorized viewing of a nonconsensual videotaping of sexual activity, letting others watch you have sex without the knowledge or consent of your sexual partner, possession of child pornography, peeping tommy, and/or knowingly transmitting an

STD or HIV to another person. Sexual misconduct may constitute sexual harassment. All forms of sexual misconduct prohibited by Maine law are also included (see [Violation of Privacy](#), [Possession of Sexually Explicit Material](#), and [Sex Trafficking](#)).

V. Consent

Consent is a voluntary agreement to engage in sexual contact. Consent must be informed, freely and actively given, and consist of a mutually agreeable and understandable exchange of words or actions.

Consent is clear, knowing and voluntary. Consent is active, not passive. Consent may be withdrawn at any time. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and conditions of) sexual activity. Past consent does not imply future consent. Consent to engage in one form of sexual activity does not imply consent to engage in any other sexual activity. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with any other person.

It is not consent when the exchange involves unwanted physical force, coercion, intimidation, and/or threats. If an individual is mentally or physically incapacitated or impaired such that one cannot understand the fact, nature or extent of the sexual situation, and the incapacitation or impairment is known or should be known to the other person, there is no consent. This includes conditions resulting from alcohol or drug consumption, or being asleep or unconscious. Consent is not valid if the person is too young to consent to sexual activity under [Maine law](#).

VI. How to File a Complaint and How the University Will Respond

The University strongly encourages anyone who has experienced sex discrimination, sexual harassment, retaliation, sexual assault, domestic violence, dating violence or stalking to report the incident to the appropriate contact at the University (see VI (A)). A report can be made under this policy at any time, regardless of when the incident happened. Reporting the incident to the University does not mean that you have to file a formal complaint or bring criminal charges. Reporting the incident, however, will allow the University to provide individuals involved with information about available support and services, both on campus and off campus.

Any individual may make a third-party complaint about a violation of this policy. Individuals are encouraged to contact the appropriate office identified below as soon as possible. After receiving a complaint, the University will determine what further action, including contacting the alleged victim, is warranted. If a concern is reported by someone other than the alleged victim and the alleged victim is unwilling or unable to cooperate with an investigation, the University's ability to respond may be significantly limited.

The UMS Title IX Coordinator is responsible for the University's overall compliance and response to incidents of sexual assault, sexual harassment and sex discrimination in general.

A. How and Where to File a Complaint

1. Complaints or Reports of Employees' Conduct

All complaints or reports relating to violations of this policy by a University employee should be made to the UMS Title IX Coordinator at 207.581.5866 or titleix@maine.edu or to the Equal Opportunity Office at 207.581.1226 or equal.opportunity@maine.edu

Upon receiving a complaint or report of a violation of this policy by a University employee, the UMS Title IX Coordinator will assess the complaint or report and will follow the procedures described in the University of Maine System Equal Opportunity Complaint Procedure or the Title IX Sexual Harassment Procedure. The UMS Title IX Coordinator will provide the complainant with information about options for filing a formal complaint and explain the formal investigation and grievance process, supportive measures, and any options of informal resolution. The UMS Title IX Coordinator will provide the complainant with a written explanation of the complainant's rights, options, and supportive measures. Supportive measures are available to complainants even if they do not file a formal complaint. When a formal complaint is investigated, the University will use a preponderance of the evidence standard – whether it is more likely than not that the alleged violation occurred. For more information about the Equal Opportunity Complaint Procedure, follow this link: <https://www.maine.edu/human-resources/university-equal-opportunity-officers/equal-opportunity-complaint-procedure/>. For more information about the Title IX Sexual Harassment Process, follow the link in Article XVI(4) of this Policy.

2. Complaints or Reports of Students' Conduct

All complaints or reports relating to violations of this policy by a University student should be made to the campus Deputy Title IX Coordinator who will notify the UMS Title IX Coordinator of the complaint or report.

Upon receiving a complaint or report of a violation of this policy by a University student, the Deputy Title IX Coordinator/Title IX Coordinator will assess the complaint or report and follow the procedures described in the University of Maine System Student Conduct Code or the Title IX Sexual Harassment Process. The Deputy Title IX Coordinator/Title IX Coordinator will provide the complainant with information about options for filing a formal complaint and explain the formal investigation and grievance process, offer supportive measures, and explain any options of informal resolution. The Deputy Title IX Coordinator/Title IX Coordinator will provide the complainant with a written explanation of the complainant's rights and options. When a formal complaint is decided, the University will use a preponderance of the evidence standard – whether it is more likely than not that the alleged violation occurred. For more information about the procedure for adjudicating complaint against students, see the UMS Student Conduct Code at:

<https://www.maine.edu/board-of-trustees/policy-manual/section-501/> or the Title IX Sexual Harassment Process at <https://www.maine.edu>

3. Complaints or Reports of Third Parties' Conduct (Campus Guests, Vendors, Contractors, etc.)

All concerns regarding violations of this policy by third parties such as vendors, contractors and campus guests should be made to the **UMS Title IX Coordinator at 207.581.5866 or titleix@maine.edu** or to the Equal Opportunity Office at 207.581.1226 or equal.opportunity@maine.edu

Upon receipt of a report or complaint, the University will respond appropriately depending on the nature of its relationship to the third party.

B. How the University Will Respond to a Complaint

The University's investigation and decision-making process is separate from any criminal or civil investigation and adjudication regarding the same incident.

The University will provide a prompt, fair, impartial, and equitable investigation and resolution of the complaint. The investigation and decision-making shall be conducted by officials who receive annual training on discrimination, harassment, retaliation, domestic violence, dating violence, sexual assault, and stalking, and how to conduct an investigation and hearing process that protects the safety of all individuals and promotes accountability.

Both the complainant and the respondent have the right to have another present during any investigative or disciplinary meeting or proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice, who may be, but is not required to be, an attorney. The University will not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the University may establish restrictions regarding the extent to which the advisor may participate in the meetings or proceedings, as long as the restrictions apply equally to both parties.

In investigating allegations covered by the Policy, the investigator and decision-makers will not question the complainant about the complainant's prior sexual conduct with anyone other than the respondent unless relevant to establish that someone else committed the conduct alleged to be a violation of this policy. Information regarding any prior sexual conduct or dating relationship between the complainant and the respondent by itself shall not imply consent or preclude a finding of a violation, but may be relevant to understand the nature and context of the parties' relationship and how consent to sexual activity was communicated between the parties. No direct questioning of the either party by the other will be permitted, though as set forth in the Title IX sexual harassment process, the parties' advisors have the opportunity to cross-examine the other party and witnesses during the hearing process.

The respondent's use of alcohol and other drugs in connection with a violation of this policy does not mitigate accountability for the behavior or diminish the seriousness of the incident, unless it is determined that the respondent was incapacitated and unable to consent to the sexual activity at issue. The respondent's intentional use of a substance to affect an individual in order to facilitate a violation of this policy will be considered relevant when determining responsibility and appropriate sanctions.

In the investigation and decision-making processes for all complaints of sexual assault, domestic violence, dating violence or stalking made under this policy, both the complainant and the respondent shall be simultaneously informed, in writing, of: (1) the outcome of any institutional disciplinary proceeding that arises from the alleged violation including all sanctions and the rationale for the result and sanctions; (2) the procedure for the respondent and the complainant to appeal the results of the institutional disciplinary proceeding; (3) any change to the results that occurs prior to the time that the results become final; and (4) when the results are final. The University shall not require a party to abide by a non-disclosure agreement in writing or otherwise regarding the final results of the institutional disciplinary proceeding.

Any student or employee found to have violated this policy may be subject to disciplinary action, up to and including suspension or dismissal/termination from the University. Sanctions for third parties who violate this policy will be in accordance with the circumstances.

For information about sanctions, students should refer to the Student Conduct Code at: <https://www.maine.edu/board-of-trustees/policy-manual/section-501/>. All of the possible sanctions that the University may impose upon a student following the results of any University disciplinary proceeding for an allegation of dating violence, domestic violence, sexual assault or stalking are:

- A. **Assigned Educational Projects:** This may include research projects, reflective essays, counseling assessments, sanction seminars or other related assignments intended to promote learning.
- B. **Community Service:** The type of service may be related to the nature of the violation.
- C. **Deferred Sanction:** A specific period of time during which a Respondent's continued enrollment or housing contract at the University is clearly in jeopardy. Any further violation of the Code during that time will minimally result in the imposition of the deferred sanction and any additional sanctions deemed necessary.
- D. **Disciplinary Dismissal:** Permanent separation (subject to the right of review after five years) from the University.
- E. **Disciplinary Probation:** A period of time when a Respondent is under closer scrutiny of the University. It may include the loss of one or more privileges.
- F. **Disciplinary Suspension:** Separation from the University for a stated period of time and/or until a stated condition(s) is met.

- G. **Fine:** Payment of money. Respondents who are unable to pay may discuss alternate payment arrangements.
- H. **Loss of Contact with a Specific Person(s):** With this sanction, the person may not initiate direct or indirect contact with a specified person(s).
- I. **Loss of Visitation Privileges:** This loss of visitation may be to any designated area(s) of campus.
- J. **Official Warning:** Official acknowledgment of a violation and the expectation that it will not be repeated.
- K. **Removal from University Housing:** Removal from a particular hall or all housing.
- L. **Restitution:** Restitution, up to the replacement value of the items damaged, stolen, removed or used without authority and damages incurred.
- M. **Such other action as the Committee or Officer may reasonably deem appropriate (e.g., suspension of an organization's official campus recognition or suspension of a student from an extracurricular activity).**

For information about possible disciplinary action, represented employees should refer to the [appropriate collective bargaining agreement](#). Non-represented employees should refer to the [non-represented employee handbook](#). All of the possible sanctions that the University may impose upon an employee following the results of any University disciplinary proceeding for an allegation of dating violence, domestic violence, sexual assault or stalking are:

- A. Oral Warning
- B. Written Warning
- C. Suspension
- D. Termination
- E. Such other action as the University may reasonably deem appropriate.

C. Retaliation

The University and the law prohibit retaliation against an individual for opposing any practice forbidden under this policy, for bringing a complaint, for assisting someone with a complaint, for attempting to stop a violation of this policy, **or for participating or for refusing to participate in any manner in an investigation or resolution of a complaint.** It is central to the values of this University that any individual who believes he or she may have been the target of a violation of this policy feels free to report their concerns for appropriate investigation and response, without fear of retaliation or retribution. After making, assisting with or otherwise participating in a report or complaint to the University, any individual who believes he or she has been subjected to retaliation by the respondent, the University or any other person or group should report the alleged retaliation

immediately to the appropriate person identified in this policy. The University will take strong responsive action when retaliation is found to have occurred.

VII. Confidentiality

Confidentiality: What are the Options?

The University encourages people who have experienced sex discrimination, sexual harassment, sexual assault, dating violence, domestic violence, stalking, or retaliation to talk to somebody about what happened so they can get the support they need, and so the University can respond appropriately. People on campus and off-campus have different abilities to maintain confidentiality depending on their roles and responsibilities.

A. Confidential Communications

1. Professional and Pastoral Counselors.

Professional, licensed individuals who provide mental health services as part of their job responsibilities (including those who act in that role under the supervision of a licensed professional) and pastoral counselors (clergy, ministers, priests, rabbis, etc.) who provide religious counseling to members of the school community are not required to report any information about an incident to the Title IX Coordinator without an individual's permission provided that such information was disclosed in a counseling context. A person can seek assistance and support from these individuals without triggering a University investigation that could reveal the person's identity or that the person has disclosed the incident. This does not apply to professional, licensed individuals who receive a report outside of their licensed duties, such as when acting in a teaching capacity. Following is the contact information for these individuals: [provide campus-specific **Counseling Center** information]

Speaking with a professional or pastoral counselor does not constitute a report or complaint to the University. The University will be unable to conduct an investigation into the incident or pursue disciplinary action against the respondent based on such a disclosure.

NOTE: Professional counselors may maintain a person's confidentiality within the University, but they may have external reporting or other obligations under state law (such as mandatory reporting to law enforcement in case of abuse of minors; imminent harm to self or others; requirement to testify if subpoenaed in a criminal case). A person who initially requests confidentiality may later decide to file a complaint with the University or report the incident to local law enforcement and have the complaint investigated. Professional and pastoral counselors can assist a person who later decides to file a complaint or report.

2. Licensed Health Professionals

Certain licensed health professionals who receive information about an incident in connection with the provision of health care services may not report that information to the Title IX Coordinator without an individual's permission provided that such information was disclosed in a healthcare

setting. However, some licensed health professionals who are designated as Campus Security Authority's may be required to report non-identifying statistical information to the University as required by federal law. Speaking with a licensed health care professional does not constitute a report or complaint to the University, and the University will be unable to conduct an investigation into the incident or pursue disciplinary action against the respondent.

NOTE: Licensed health professionals may maintain a person's confidentiality within the University, but they may have external reporting or other obligations under state law (such as mandatory reporting to law enforcement in case of abuse of minors).

3. Off-campus Counselors and Advocates.

Off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and not share information with the University unless the individual requests the disclosure and signs a consent or waiver form.

Following is contact information for these off-campus resources:

Sexual Assault Hotline Help: 1.800.871.7741

Statewide Domestic Abuse Hotline: 1.866.834.4357 (Deaf or Hard of Hearing: 1.800.437.1220)

NOTE: Off-campus counselors and advocates are not required to disclose information to the University, but they may have external reporting or other obligations under state law (such as mandatory reporting to law enforcement in case of abuse of minors).

4. Researchers

Research involving human subjects (which require approval by the appropriate campus Institutional Review Board for the Protection of Human Subjects) may ask subjects to provide personal information in a confidential setting. Information about an incident covered under this policy may be disclosed by a research subject as part of participation in that research. Researchers involved in the research project are not required to report the incident to the Title IX Coordinator.

B. Reporting to Another Student or a University Volunteer.

If you discuss a violation of this policy with another student or with a University volunteer, that person may be able to maintain your confidentiality, except as described within section C, Mandatory Reporting. All University students and volunteers are strongly encouraged to report all that they witnessed or heard regarding a violation of this policy to the designated University officials identified above.

C. Mandatory University Reporting

All University employees (except as provided within section A) have a duty to report incidents of sexual misconduct potentially covered under this policy (including gender discrimination, sexual

assault, sexual harassment, domestic violence, dating violence, and stalking) to the Title IX Coordinator. Student employees, peer advocates and volunteers who learn of a potential violation of this policy in the course of their employment, programming or volunteer responsibilities are also required to report.

If a University employee receives or becomes aware of an incident covered by this policy, if possible before hearing it fully, the employee should be clear with the complainant that (1) they are not a confidential resource, if they are not so designated, and (2) they are obligated to report any incident to the Title IX Coordinator.

If a University employee receives or becomes aware of an incident covered by this policy, the University employee shall promptly report to the Title IX Coordinator all relevant details about the alleged incident shared by the complainant that the University will need to determine what happened – including the names of the complainant and respondent(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident. To the extent possible, information reported will be shared only with people responsible for handling the University's response to the report. If the University determines that there is a continuing threat to the safety of members of the University community, it may have to issue a timely warning regarding the incident.

D. How the University Will Respond to Requests for Confidentiality

When a complainant reveals any information about a potential violation of this policy to any University employee, as soon as possible, the employee should make sure that the complainant understands the employee's reporting obligations. If the complainant wants to maintain confidentiality, University employees should direct the complainant to confidential resources but the employee must still report any information disclosed to the Title IX Coordinator. If the complainant wants to tell the employee what happened but also maintain confidentiality, the employee should tell the complainant that the University will consider the request, but cannot guarantee that the University will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the employee will also inform the Coordinator of the complainant's request for confidentiality.

An employee will not pressure a complainant to request confidentiality, or pressure a complainant to file a report or complaint. An employee will respect the complainant's wishes to the extent possible. If a complainant discloses an incident to an employee but wishes to maintain confidentiality or requests that no investigation into an incident be conducted or disciplinary action taken, the employee still must disclose the incident to the Title IX Coordinator, and the University will weigh the complainant's request against the University's obligation to provide a safe, non-discriminatory environment for all students and employees, including the complainant. If the University honors the request for confidentiality, a complainant needs to understand that the University's ability to meaningfully investigate the incident and pursue disciplinary action, if warranted, against the respondent(s) may be limited. There are times when the University may not be able to honor a complainant's request because it would pose a risk to providing a safe, non-discriminatory

environment for students and employees. If the University determines that it cannot maintain a complainant's confidentiality, the University will inform the complainant prior to starting an investigation and, to the extent possible, will share information only with people responsible for handling the University's response.

Except as required by law, the University shall not include personally identifiable information about a complainant in its campus crime statistics or report, its campus crime log, publicly available police reports or timely warning notices.

The University shall maintain as confidential any accommodations or supportive measures provided to the complainant, respondent or other party, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the accommodations or supportive measures or to the extent otherwise required by law.

The University is committed to the providing a safe and non-discriminatory environment for the entire campus community. Because the University is under a continuing obligation to address violations of this policy campus-wide, reports of violations of this policy (including non-identifying reports) may also prompt the University to consider broader remedial action –such as increased monitoring, supervision or security at locations where the reported incident occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/ victimization surveys; and/or revisiting its policies and practices.

E. Miscellaneous

Public awareness events such as “Take Back the Night,” the Clothesline Project, candlelight vigils, protests, “survivor speak outs” or other forums in which students or employees disclose violations of this policy, are not considered notice to the University of violations of this policy for purposes of triggering its obligation to investigate a particular incident(s). Such disclosures may, however, inform the need for campus-wide education and prevention efforts, and the University may provide information about students’ and employees’ Title IX rights at these events. If conduct which might constitute Title IX Sexual Harassment is disclosed at such an event, and the Title IX Coordinator, Deputy Title IX coordinator or an Official with Authority is present, the University may be required to contact the complainant as described in Article XVI below.

F. Anonymous Reporting

Although the University encourages complainants to talk to someone, the University provides an **online form** for anonymous reporting. Providing personally identifying information through an anonymous reporting system may serve as notice to the University for the purpose of triggering the University's obligation to reach out to the complainant to explain the options for filing a formal complaint, offer supportive measures, and describe the formal and informal resolution processes.

This is the mechanism for anonymous reporting on your campus.

VIII. Supportive Measures

Whether or not an individual who has experienced a violation of this policy files a formal complaint, reporting the incident will allow the University to provide all individuals involved with available support and services, both on-campus and off-campus. The University can also take **supportive measures** to promote the safety and well-being of both the complainant and respondent, including, but not limited to, moving the complainant or respondent to a new living, dining or working situation; issuing a no contact order; changing class or work schedules; changing transportation; financial aid accommodations; and other academic and/or employment accommodations and support. **Supportive Measures are non-disciplinary, non-punitive individualized measures offered as appropriate, as reasonably available and without fee or charge to the complainant or respondent.**

The University can assist all individuals involved in obtaining counseling on or off campus and provide information regarding medical care and other resources, such as victim advocacy, legal assistance and visa and immigration assistance. The University will provide written notification to students and employees about existing resources, both within the University and the community. The University will provide written notification to complainants and respondents about how to request the above services and accommodations. **The University must offer such supportive measures if they are reasonably available, regardless of whether the complainant chooses to report the incident to campus police or local law enforcement, or file a formal complaint with the University.**

IX. Options Regarding Law Enforcement

An individual who has experienced sexual assault, domestic violence, dating violence or stalking, or any other conduct which may violate criminal laws, has a right, at his or her own discretion, to:

1. Notify law enforcement authorities, including on-campus and local police;
2. Be assisted by campus authorities in notifying law enforcement; or
3. Decline to notify law enforcement.

University officials may, however, provide law enforcement with details about an incident under some circumstances if a determination has been made that such disclosure is required by law and/or is necessary to secure campus safety. See section VII(D) above. Complainants have a right to proceed simultaneously with a criminal investigation and a University internal investigation. If necessary to the criminal investigation, the University may defer its investigation for a limited time for fact gathering by law enforcement, and then will promptly resume its investigation.

X. Enforcement of Protection-from-Harassment or Protection-from-Abuse Orders

The University will provide assistance or referrals for a student or employee who wishes to obtain a protection-from-abuse or protection-from-harassment order. If a protection-from-abuse or protection-from-harassment order has been issued by a court in a civil or criminal proceeding, a

copy of the order should be provided to University police or security and the UMS Title IX Coordinator or the Deputy Title IX Coordinator, as soon as possible to enable enforcement by the appropriate authorities. The University will work in good faith to implement the requirements of judicially issued protective orders and similar orders, to the extent that doing so is within its authority.

XI. Student Amnesty

The University strongly encourages students to report instances of sexual misconduct covered under this policy. Students who report information about a potential violation of this policy will not be disciplined by the University for any violation of alcohol possession or consumption policies or other minor violations of the Student Conduct Code in which they might have engaged in connection with the reported incident.

XII. Free Speech and Academic Freedom

Recognizing that many citizens have differing views on the matter of whom and which groups should have an opportunity to express opinions, the University of Maine System affirms its commitments to the rights of free speech and academic freedom.

To that principle, there shall be no restrictions, at any of the System institutions, placed on the fundamental rights of free speech and assembly, except those necessary to preserve the order for the University System to function as an institution of higher learning. Additional information pertaining to Free Speech can be found at: <https://www.maine.edu/board-of-trustees/policy-manual/section-212/>

Academic freedom is essential to the fulfillment of the purposes of the University. The University acknowledges and encourages an atmosphere of confidence and freedom while recognizing that the concept of academic freedom is accompanied by a corresponding concept of responsibility to the University and its students and employees. Academic freedom is the freedom to present and discuss all relevant matters in the classroom, to explore all avenues of scholarship, research and creative expression, and to speak or write without any censorship, threat, restraint, or discipline by the University with regard to the pursuit of truth in the performance of teaching, research, publishing or service obligations.

The University of Maine System is a public institution of higher education committed to excellence in teaching, research, and public service. Together, the students, faculty, and staff form our state wide University community. The quality of life on and about the member Universities is best served by preserving the above described freedoms and civility. This policy shall not be construed or applied to restrict academic freedom within the University, nor construed to restrict constitutionally protected expression

XIII. Off-Campus and Off-Duty Conduct

Reports of violations of this policy that occur off campus and/or off-duty can be the subject of a complaint. Reports of off-campus and/or off-duty **sexual harassment**, sexual assault, domestic violence, dating violence and stalking should be brought to the University's attention as soon as possible. The University will evaluate the incident to determine whether it violates this policy by resulting in continuing effects that create a hostile environment on campus or otherwise has a **substantial** connection to the University's **education programs and activities**.

XIV. Educational Programs

The University will conduct educational programs to promote awareness of sex discrimination, sexual harassment, sexual assault, domestic violence, dating violence, and stalking. This will include primary prevention and awareness programs for incoming students and new employees, and ongoing prevention and awareness campaigns for students, faculty and staff. All employees and students must participate in all required educational programs.

XV. External Complaints

Individuals who experience a violation of this policy may file a complaint or suit with an outside agency, including the Maine Human Rights Commission, U.S. Equal Employment Opportunity Commission, or U.S. Department of Education Office of Civil Rights. The University will still investigate and respond appropriately to any internal complaint.

A complainant who filed a complaint with the University and believes the University's response was inadequate may also file a complaint with the above agencies.

Complainants should keep in mind, however, that although they may report a violation of this policy to the University at any time; external agencies typically have time limits within which complaints must be filed. To learn more about the procedures for filing complaints with an outside agency, Complainants should contact that entity directly. To learn more about the procedures for filing complaints with an outside agency, Complainants should contact that entity directly.

Office of Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Maine Human Rights Commission
Office of the Commission
51 State House Station
Augusta, ME 04330

Phone: 207.624.6290
 Fax: 207.624.8729
 Email: info@mhrc.maine.gov

For Employee Title IX/ADA Complaints:
 US Department of Justice
 950 Pennsylvania Avenue, NW
 Civil Rights Division
 Disability Rights Section – 1425 NYA
 Washington, D.C. 20530
 Fax: (202) 307-1197

You may also file a complaint by E-mail at ADA.complaint@usdoj.gov. If you have questions about filing an ADA complaint, please call:
 ADA Information Line: 800-514-0301 (voice) or 800-514-0383 (TTY).
 U.S. Equal Employment Opportunity Commission Complaints:
 Call 1-800-669-4000
 For Deaf/Hard of Hearing callers:
 1-800-669-6820 (TTY)
 1-844-234-5122 (ASL Video Phone)
info@eeoc.gov

XVI. Title IX Sexual Harassment (Pursuant to May 2020 Title IX Regulations)

This Article XVI and the corresponding Title IX Sexual Harassment process apply to all complaints of Title IX Sexual Harassment that are made after August 14, 2020 regarding conduct that occurs after that date. All complaints made after August 14, 2020 regarding conduct that occurred before August 14, 2020, will follow the policies in place at the time of the incident and the applicable process in place at the time of the complaint. The Title IX Sexual Harassment policy and process described in this Article XVI go into effect at midnight on August 14, 2020 and will remain in effect unless/until this policy and process are stayed, enjoined, limited, amended, repealed or otherwise are ruled or become inapplicable in whole or in part due to action by a court or the U.S. Department of Education. Should the Title IX Regulations be revoked, any conduct covered under this Policy shall be investigated and adjudicated under this policy and the applicable processes described in Articles IV and VI.

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Finally, conduct that falls outside of Title IX, such as gender-based and sexual harassment that does not meet the Title IX regulations' definition or conduct that occurs outside of the United States but still within the University's education programs or activities, may be covered by Articles IV and VI of this Policy. The University condemns all forms of sexual misconduct, even conduct that does not meet the definition of sexual harassment under Title IX. Accordingly, this Policy provides procedures for reporting and investigating sexual harassment that falls outside of Title IX's definition of sexual harassment or outside of Title IX's geographic scope but is nonetheless detrimental to the safety and wellbeing of the University community.

If you have any questions or concerns about which policy or process may apply to your case/report, please contact the UMS Title IX Coordinator at 207.581.5866 or at titleix@maine.edu for clarifications.

Glossary:

- i. *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the complaint process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- ii. *Complainant* means an individual or group of individuals who is alleged to be the victim of conduct that could constitute harassment based on a sex or retaliation for engaging in a protected activity.
- iii. *Complaint (formal)* means a written document, paper or electronic, filed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on sex, or retaliation for engaging in a protected activity, against a respondent and requesting that the University investigate the allegation of harassment based on sex or retaliation for engaging in a protected activity. At the time of filing a formal complaint of Title IX sexual harassment, a Complainant must be participating in or attempting to participate in the education program or activity of the University with which the formal complaint is filed. The complaint must contain the Title IX Coordinator's or the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not considered a Complainant or otherwise a party.
- iv. *Directly Related Evidence* is evidence that in the reasoned judgment of the investigator, is determined to be connected to the complaint even if not relied upon by the investigator in the investigation report.
- v. *Education program or activity* means all of the operations of the University, as well as, locations, events or circumstances where UMS exercises substantial control over both the Respondent and the context in which the Title IX sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University.
- vi. *Final Determination* a written determination by a Decision-maker or Panel by the preponderance of the evidence standard whether the alleged conduct occurred and whether it did or did not violate policy, which includes all of the following: identification of the allegations potentially constituting Title IX Sexual Harassment as defined in Article XVI(1)(xii) below; a description of the procedural steps taken by the University from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held; findings of fact supporting the determination; conclusions regarding the application of the this Policy to the facts; a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary

sanctions imposed on the Respondent, and whether remedies designed to restore or preserve equal access to UMS's education program or activity will be provided by the University to the Complainant; and the procedures and permissible bases for the Complainant and Respondent to appeal.

- vii. *Formal Complaint Process* means a method of formal resolution designated by the University to address conduct that falls within this Title IX Sexual Harassment policy and process, and which complies with the requirements of the Title IX regulations.
- viii. *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing conduct on the basis of sex.
- ix. *Official with Authority (OWA)* means an employee of UMS explicitly vested with the responsibility to implement corrective measures for harassment based on sex, and/or retaliation on behalf of UMS.
- x. *Relevant Evidence* is evidence that tends to prove or disprove an issue in the complaint.
- xi. *Remedies* are post-finding actions provided to the Complainant where a determination of responsibility for sexual harassment has been made against the Respondent after the Formal Complaint Process in this Policy as mechanisms to address safety, prevent recurrence, and restore access to UMS's educational program.
- xii. *Title IX Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence as defined in Article XVI(32) below.
- xiii. *Title IX Team* refers to the Title IX Coordinator, Deputy Title IX Coordinators, Investigators, Hearing Decision-maker or Panel, or University provided Advisor.

1. Title IX Sexual Harassment Jurisdiction

Title IX jurisdiction applies when the alleged sexual harassment occurs within the context of the University's "education program or activity" which includes all of the operations of the University, and locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

2. Title IX Sexual Harassment Definitions

The Title IX regulations define **Sexual Harassment** as conduct on the basis of sex that must satisfy one or more of the following:

- a. A University employee conditions the provision of an aid, benefit, or service of UMS on an individual's participating in unwelcome sexual conduct; or
- b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to UMS' education program or activity;

Sexual Assault is defined as having or attempting to have sexual intercourse with another individual, including: (1) by use of force or threat; (2) without effective consent; or (3) where the actor knew or should have known the individual is incapacitated by drugs and/or alcohol or was physically or mentally unable to make informed or reasonable judgments or provide consent. For purposes of this definition, sexual intercourse includes vaginal, anal or oral penetration, no matter how slight, with any body part or object, or oral penetration involving any form of mouth to genital contact. Sexual Assault includes rape, fondling, incest, or statutory rape as those crimes are defined by the Federal Bureau of Investigation (FBI) Uniform Crime Reporting Program. This definition conforms to the FBI's Uniform Crime Report and Clery Act definition and also conforms to the definition of rape under Maine law.

Force is the use of physical violence and/or the threat of physical violence to gain sexual access. Force also includes threats against others, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive, and there is no consent.

Incapacitation is defined as the inability to make rational, reasonable decisions because the individual lacks capacity to give knowing consent (e.g. to understand the "who", "what", "when", "where", "why", or "how" of their sexual interaction). A person may be incapacitated because of their consumption of drugs/alcohol and/or because they are mentally/physically helpless or disabled, asleep, unconscious, or otherwise unaware that the sexual activity is occurring. Where drugs or alcohol are involved, incapacitation is a state beyond impairment or intoxication, and involves an assessment of the person's decision-making ability, awareness of consequences, ability to make informed, rational judgments, capacity to appreciate the nature and quality of the act, and/or level of consciousness. The assessment is based on objectively and reasonably apparent signs of incapacitation when viewed from the perspective of sober, reasonable person.

Dating Violence, Domestic Violence, and Stalking, as defined above.

Retaliation

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Policy and accompanying process

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or formal complaint of sexual harassment, as set forth in the University's amnesty policy.

Complaints alleging retaliation may be filed with the Title IX Coordinator.

UMS reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or dismissal/termination, for any offense under this policy.

XVII. Review and Revision of this Policy

A representative Policy Review Board will be established consisting of [University](#) and [UMS](#) participants to review and recommend changes, as appropriate, to this policy and procedures. The Board will meet at least every three years or more often, as needed and in synchronization with the review of the University of Maine System Student Conduct Code. Revisions of this policy require approval of the Board of Trustees.



NEW REGS: TITLE IX

Overview of: Regulations go into effect on August 14, 2020

Presented by: General Counsel's Office:

Liz Lavoie, Nina Lavoie & Sara Mlynarchek



Agenda

- What is Title IX
- High Level Overview of New Regulations
- UMS Proposed Policy Changes
- Q & A



Title IX

- 1972 - Federal Civil Rights Act as part of the Education Amendments
- Protection of discrimination of sex in educational programs of activities of schools who receive federal funding
- Prior to the August 14, 2020 regulations, schools would receive guidance from the OCR through Dear Colleague Letters, Case Law, and other issued guidance by the departments
- What is Title IX
 - “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.”



Proposed Regulation Changes

- Schools must provide free supportive measures to every alleged complainant
- Final rule ensures schools do not violate:
 - Due Process & Equal Protection rights
 - First Amendment rights
 - Academic Freedom
- School Must Respond When:
 - The Title IX Coordinator or an Official with Authority has actual knowledge of sexual harassment
 - Occurred within the school's educational program or activity
 - All university operations
 - Locations, events, or circumstances where the university exercised substantial control over both the context and the respondent (includes fraternity & sorority houses)
 - Incident occurred in the United States



Grievance Process

- Written notice of allegations sent to both parties
- Must file a formal complaint, drop formal complaint before doing any kind of informal resolution (except in *quid pro quo*, never informal)
- Equal opportunity to select an Advisor of choice, including an attorney
 - University must provide Advisor if the person does not have one – does not have to be an attorney
- Equal opportunity to submit & review evidence during the investigation
- Investigation must be without prejudgment, free of conflicts and bias against either party
- Equal opportunity to submit & review evidence during the investigation
- University bears burden of proof and that the evidence standard is applied correctly



Grievance Process Cont.

- Must hold a live hearing, with cross-examination by the party's advisor
- Prior to answering the question the Decision-maker must determine if the question is relevant, if not relevant must explain why
 - If a party refuses to answer a question, the Decision-maker cannot use any information provided to the Investigator by that party – including statements & evidence
- Prior sexual history of complainant is not allowed unless trying to prove consent or defending that it was not the respondent
- Decision-maker can't be the Title IX Coordinator, or the Investigator
- Written determination of responsibility and how the conclusion was reached
- Equal rights to appeal
- If responsible implement remedies for complainant
- All party's and witnesses Protected from retaliation
- Must record the hearing



Final Rule Requires

- Training to all people involved in the process
- All materials used in training must be posted on website
- Information on how to contact the Title IX Coordinator must be shared broadly, including prospective students/employees
- Must keep all records of sexual harassment reports and investigations



The Good News

It's What We Do

- Already provide supportive measures
- Already conducted 12 hours of training to the key people
- Moved from a campus unit to a Title IX Team
 - Provides more resources for investigation, decision-making and appeals
 - Provides university specialists to be advisors in the process

Key Take Aways

- We can still take conduct investigations of sexual harassment that does not meet the Title IX jurisdiction/definition, through our current process
- Continued training via Bernstein Shur and bi-weekly trainings provided in house



Key Policy Changes

- Kept the old policy in place for several reasons:
 - New rule could be withdrawn
 - Amended BOT 402 –made as few changes as possible to ensure compliance (up for review this year, along with the Student Conduct Code)
 - New rule is not retroactive
 - Only applies to cases filed & incident occurred on or after August 14, 2020
 - We wanted to be able to take action when it falls outside of the Title IX jurisdiction and definition
- Updated changes to hotline information and to reflect the new reporting structure of Title IX
- Definition/Jurisdiction that does not meet the requirements of new regs:
 - Non-Title IX Sex-based Harassment
 - Follows Student Conduct or Equal Opportunity Complaint Procedures
 - Title IX Sex-based Harassment
 - Follows new Procedures that are required under the new rule



Thank You!

- We are happy to answer any questions