



Standards and Practices

Sexual Harassment, Sexual Misconduct, Sexual Assault and Retaliation Policy

MONITOR: VP for Administration and General Counsel

AUTHORIZATION: Executive Management Committee

REVIEWED BY: Executive Management Committee; Title IX Coordinator

AUTHORIZATION DATE: January 2015

REVISION DATES: September 30, 2015: (1) adding information to section V regarding resources in the event of assault, ability to file criminal charges, the location of the Title IX Coordinator's desk, information about confidential employees/resources, information about hospitals equipped with Sexual Assault Evidence Collection kits, and information about memoranda of understanding in development; (2) adding to section VI(B) more information about assistance with interim measures and additional rights for the Complainant; (3) in section VI(C) it was clarified about who could serve as an advisor and/or support person; (4) Section VI(E) added information about campus staff assistance; (5) Section VI(F) wording was clarified regarding grievances, appeals and sanctions; (6) Section VI(H) removed the ability of parties to ask questions of each other or witnesses, clarified that a written decision including imposition of sanctions will be issued if a violation is found, clarified sanctions that may be imposed upon students who violate the policy, and added language regarding Code of Student Conduct violations for complainants and/or witnesses; (7) Section VIII added language regarding confidential resources and added clarifying language; (8) Section IX language was clarified regarding the ability to resolve anonymous complaints; (9) changed the name of the policy from "Discrimination, Harassment, Sexual Misconduct and Retaliation" to "Sexual Harassment, Sexual Misconduct, Sexual Assault and Retaliation Policy."

NEXT REVIEW DATE: September 2016

NOTE: This policy revises and replaces in part the following policies: “Respectfulness, Harassment, and Discrimination” and “Sexual Assault.”

TABLE OF CONTENTS

	Page
I. POLICY STATEMENT.....	1
II. DEFINITIONS.....	2
III. CONSENSUAL RELATIONSHIPS	5
IV. RETALIATION PROHIBITED	6
V. RESOURCES IN THE EVENT OF SEXUAL ASSAULT.....	6
VI. PROCEDURE FOR REPORTING VIOLATIONS OF THIS POLICY	8
A. Reporting to MUIH.....	8
B. Interim Measures	9
C. Support Person.....	9
D. Informal Complaint Procedure	10
E. Reporting to Local Law Enforcement	12
F. Formal Complaint Procedure.....	12
G. Formal Hearing Process.....	14
H. Sanctions.....	15
I. Amnesty	17
VII. APPEALS.....	17
VIII. CONFIDENTIALITY AND MANDATORY REPORTING	19
IX. ANONYMOUS COMPLAINTS.....	19
X. FRIVOLOUS COMPLAINTS PROHIBITED	19
XI. TRAINING	20
XII. RECORD RETENTION.....	20
XIII. INFORMATION CONCERNING REGISTERED SEX OFFENDERS	20

I. POLICY STATEMENT

Maryland University of Integrative Health (“MUIH”) operates with the expectation that all persons are entitled to respect and that each person has a responsibility to act in a way that is respectful of others. MUIH is committed to maintaining a positive learning and working environment. MUIH does not discriminate on the basis of sex (including pregnancy, childbirth, breastfeeding or related medical conditions), race, religion (including religious dress and grooming practices), color, gender (including gender identity and gender expression), national origin or ancestry, physical or mental disability, medical condition, genetic information, marital status, registered domestic partner status, age, sexual orientation, veteran or military status or any other basis protected by federal, state or local law or ordinance or regulation. While MUIH will not tolerate any acts of discrimination, as stated in its hiring and employment and student policies, the purpose of this policy is to specifically address discrimination based upon sex (including pregnancy, childbirth, breastfeeding or related medical conditions), gender (including gender identity and gender expression), marital status, registered domestic partner status, sexual orientation, and any other basis protected by federal, state, or local law or ordinance or regulation as they may pertain to these characteristics.

In pursuit of these goals, MUIH will not tolerate acts of discrimination, sexual misconduct or exploitation or retaliation against or by any employee or student as such behavior seriously undermines MUIH’s effectiveness as an educational institution and a workplace. Each member of MUIH’s community shares in a common responsibility to maintain an environment free from discrimination, harassment and sexual misconduct.

This policy: (1) provides a general overview of conduct that may constitute discrimination, harassment, sexual misconduct or retaliation; (2) explicitly prohibits discrimination, harassment, sexual misconduct and retaliation; and (3) establishes procedures to follow when a member of MUIH’s community believes that he or she has been subject to discrimination, harassment or sexual misconduct.

Faculty and staff members who violate this policy will be subject to disciplinary action, up to and including termination of employment. Students who violate this policy will be subject to disciplinary action, up to and including expulsion. The grievance procedures set forth in this policy provide a fair and impartial process for reporting, investigating, making findings, and determining appropriate sanctions in relation to a complaint or other report of discrimination, harassment, and/or sexual misconduct.

Robust discussion and debate are fundamental to the life of the MUIH. Consequently, this policy shall be interpreted in a manner that is consistent with academic freedom. Free speech rights apply in the classroom and in all other educational programs and activities of institutions. Great care must be taken not to inhibit open discussion, academic debate, and expression of personal opinion, particularly in the classroom. Nonetheless, speech or conduct of a sexual or hostile nature which occurs in the context of educational instruction may exceed the protections of academic freedom and constitute prohibited discrimination, harassment or sexual misconduct if it meets the definition of discrimination, harassment or sexual misconduct as noted through this policy and: (a) is reasonably regarded as non-professorial speech (i.e., advances a personal interest of the faculty member as opposed to furthering the learning process or

legitimate objectives of the course), or (b) lacks accepted pedagogical purpose or is not germane to the academic subject matter.

II. DEFINITIONS

Discrimination: Discrimination, as it pertains only to this policy, is defined as treating someone unfavorably because of that person's sex (including pregnancy, childbirth, breastfeeding or related medical conditions), gender (including gender identity and gender expression), marital status, registered domestic partner status, and sexual orientation or any other basis protected by federal, state, or local law or ordinance or regulation or treating someone less favorably because of his or her connection with an organization or group that is generally associated with people of a certain sex, gender, marital status, registered domestic partner status, sexual orientation, or any other basis protected by federal, state, or local law or ordinance or regulation. Such behavior is prohibited when it has the effect of excluding individuals from participation, denies the individual the benefits of, treats the individual differently, or otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in an MUIH program or activity. Gender discrimination extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity. The actual or perceived sexual orientation or gender identity of parties to a gender discrimination complaint does not change MUIH's obligation to investigate and resolve these complaints. Gender discrimination also encompasses forms of sexual harassment and sexual violence. All such acts are forms of gender discrimination are prohibited by Title IX of the Education Amendments of 1972 ("Title IX").

Complainant: A person who alleges that he/she or another has been harmed or aggrieved because of another individual's violation(s) of this policy.

Respondent: A person against whom a complaint is filed for alleged violation(s) of this policy.

Consent: Consent is expressed in explicit words and means willingly and knowingly agreeing to engage in mutually understood sexual conduct. Consent must be mutual and ongoing, offered freely and knowingly, and cannot be given by a person who is incapacitated, as described below. Non-communication or silence constitutes lack of consent. A verbal "no" constitutes lack of consent, even if it sounds insincere or indecisive. Incapacitation also constitutes a lack of consent. If at any time during a sexual interaction any confusion or ambiguity should arise about consent, it is the responsibility of the person initiating the activity to stop and clarify the other's willingness to continue. If at any time consent is withdrawn, the activity must stop immediately. Consumption of drugs or alcohol does not relieve a party of responsibility to obtain ongoing consent.

In order for consent to be valid, all parties must be capable of making a rational, reasonable decision about the sexual act and must have a shared understanding of the nature of the act to which they are consenting. It is not possible for a person to give consent if incapacitated by drugs, alcohol, or other physical/mental impairment, or if incapacitated by being threatened, intimidated, or coerced into giving consent.

Examples of incapacitation include, but are not limited to, being highly intoxicated, passed out, asleep, unable to communicate or subjected to violence. Physical indicators of incapacitation may include slurred speech, unsteady gait or stumbling, vomiting, unfocused or bloodshot eyes, disorientation, unresponsiveness or outrageous or unusual behavior.

Gender-Based Harassment: Acts of verbal, nonverbal, or physical aggression, intimidation, stalking or hostility based on gender or gender-stereotyping constitute gender-based harassment. Gender-based harassment can occur if students, faculty, or staff are harassed either for exhibiting what is perceived as a stereotypical characteristic for their sex, or for failing to conform to stereotypical notions of masculinity or femininity. In order to constitute harassment, the conduct must be such that it has the effect of unreasonably interfering with an individual's academic performance or creating an intimidating, hostile, demeaning or offensive work, academic or living environment.

Sexual Harassment: Unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal and physical conduct of a sexual nature constitute sexual harassment. Types of sexual harassment may include:

Quid Pro Quo Harassment: *Quid pro quo* sexual harassment may occur when anyone in a position of power or authority over another uses any academic or supervisor reward to subject such other person to unwanted sexual attention or to subject such other person to verbal or physical conduct of a sexual nature. In general, *quid pro quo* sexual harassment means: unwelcome sexual advances, requests for sexual favors, or other verbal and physical conduct of a sexual nature by one in a position of power or influence when:

- (a) submission by an individual is made either an explicit or implicit term or condition of employment or of academic standing; or
- (b) submission to or rejection of such conduct is used as the basis for academic or employment decisions affecting that student or employee.

Most often *quid pro quo* sexual harassment arises in the context of an authority relationship or power differential. This relationship may be direct (as in the case of a supervisor/subordinate or teacher/student), or it may be indirect (when the harasser has the power to influence others who have authority over the victim). This definition is intended to be illustrative and is not limited to the stated definition.

Hostile Environment Harassment

In general, sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a workplace, learning environment, or living environment that is hostile, offensive, intimidating, or humiliating may constitute sexual harassment. Such conduct may create a hostile environment for individuals other than those at whom the conduct is directed. Hostile environment harassment includes peer harassment, such as student-to-student or colleague-to-colleague. To constitute a hostile environment, the harassment must be sufficiently severe or pervasive to affect the conditions of the Complainant's employment, academic standing or participation in an education program or activity, and must create an offensive or abusive environment. A

single incident or isolated incidents of offensive sexual conduct or remarks may create a hostile environment, but generally do not unless the conduct is quite severe. Even instances that may not constitute a hostile environment should be addressed under the informal procedures of this policy, so that they are not repeated.

While it is not possible to list all the conduct or circumstances that may constitute sexual harassment, the following are some examples of conduct which if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances -- whether they involve physical touching or not -- and unwanted discussions of sexual matters;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Sexist remarks and sexist behaviors;
- Requests or demands for sexual favors accompanied by implicit or explicit promised rewards or threatened punishment;
- Inquiries into one's sexual experiences; and
- Discussion of one's sexual activities.

This definition of harassment is intended to be illustrative and is not limited to the stated definition.

Sexual Assault: An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program, which are:

Sex Offenses (Definition applicable to rape, fondling, incest or statutory rape): Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

Rape: 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: 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: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

Sexual Exploitation: Occurs when a person takes non-consensual, unjust or abusive sexual advantage of another person for his/her own benefit or for the benefit of anyone other than the person being exploited and which conduct does not otherwise constitute sexual harassment or assault under this policy. Examples of conduct prohibited include, but are not limited to: non-consensual video/audio taping of sexual activity by any electronic device; non-consensual sharing of a consensually made video/audio tape of sexual activity; prostituting another individual; going beyond the boundaries of consent given, such as by secretly allowing others to watch consensual sex; or voyeurism of a sexual nature. Sexual exploitation is prohibited and will be treated as sexual misconduct.

Dating Violence: Means violence committed by a person: (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (b) where the existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved.

Domestic Violence: A felony or misdemeanor 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.

Stalking: Means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress.

Sexual Misconduct: Includes sexual harassment, sexual assault, sexual exploitation, dating and domestic violence and stalking.

III. CONSENSUAL RELATIONSHIPS

Persons in positions of power or authority over others should be aware of and sensitive to the problems that may arise from apparently consensual relationships with their subordinates. The power differential inherent in such relationships may compromise free choice. Any perceived abuse of authority diminishes trust and respect among members of MUIH's community; therefore, all members of MUIH's community are expected to maintain appropriate professional relations with one another. With regard to consensual relationships, students, faculty, and staff are bound by MUIH's Standard and Practice entitled *Maintaining Appropriate Boundaries*.

IV. RETALIATION PROHIBITED

MUIH encourages students, faculty, and other employees to express freely, responsibly, and in an orderly way, facts, opinions, feelings or complaint of discrimination, harassment, or sexual misconduct. Retaliation against persons who report or provide information about discrimination, harassment or sexual misconduct or behavior that might constitute discrimination, harassment or sexual misconduct is strictly prohibited. Any act of reprisal for reporting a violation of this policy in good faith or cooperating with an investigation, including internal interference, coercion, and restraint, by an MUIH employee, student, or by one acting on behalf of MUIH, is a violation of this policy and will result in appropriate disciplinary action.

V. RESOURCES IN THE EVENT OF SEXUAL ASSAULT

It is extremely important to preserve all evidence of a sexual assault if a criminal prosecution is to be considered. Individuals who have suffered a sexual assault should do the following:

- Call the Title IX Coordinator, Jennifer Yocum at (410) 888-9048, extension 6682 or (443) 340-0167 immediately. This is important for your protection. Ms. Yocum will notify MUIH disciplinary authorities of an incident of sexual assault, at your request.
 - If you are unable to notify Jennifer Yocum, ask the front desk ambassador on duty to call Ms. Yocum, or another appropriate administrator.
- If you are in a secure environment, lock the door, call Howard County Police by dialing 911, and wait for the police to arrive.
 - If you are unable to notify Howard County Police, ask the front desk ambassador on duty to call the police.
- Do not disturb the area where the offense was committed.
- If you do not feel safe, call a friend, family member, employee, or someone you trust and ask them to escort you to an area where you feel safe. If the assault occurred in the room you are in, do not allow anyone else to enter. Once they arrive, go to a safe area.
- Preserve all physical evidence of the assault. Do not bathe, shower, douche or brush your teeth. Do not wash or discard any articles of clothing worn during the assault.
- Try to remember any helpful details that might assist in identifying the person responsible, such as scars, marks, jewelry, dress, language, etc.
- Seek medical attention. Even if you do not think that you have any physical injuries, you may want to have a medical examination and discuss with a health care provider the risk of exposure to sexually transmitted diseases and the possibility of pregnancy resulting from the sexual assault. If you suspect that you may have been given a

- rape drug, ask the medical provider to take a urine sample. If you require transportation to attain medical treatment, contact the Title IX Coordinator or the first floor front desk Ambassador and transportation assistance will be provided for you. These individuals may also call 911 (if you have not already called).
- File criminal charges. You have the right to file criminal charges with the appropriate law enforcement official. Information about crime victims' and witnesses' rights and services can be found at <http://www.goccp.maryland.gov/victim/documents/law-enforcement-english-brochure.pdf>. If requested, a staff member can assist with filing criminal charges and accompany you to the local law enforcement authorities.
 - Seek support. Don't be afraid to ask for help and support from a friend, family member or one of the on and off campus resources listed below:
 - Title IX Coordinator: Jennifer Yocum – jyocum@muih.edu; (410) 888-9048, extension 6682 (located on second floor of the University building at 7750 Montpelier Road, Laurel, MD, in cubicle, just outside Board Room)
 -
 - Confidential resources – confidential resources can assist you after an incident of sexual violence. MUIH is pursuing a Memorandum of Understanding with Hope Works to provide confidential resources to members of the MUIH community. Confidential resources will not report the incident of violence to campus personnel and/or law enforcement authorities, unless requested to do so. Confidential resources can be accessed at the following location:
 - HopeWorks of Howard County – 5457 Twin Knolls Road, Columbia, MD 21045. (410) 997-2272; (800) 752-0191; <http://www.wearehopeworks.org/>
 - Crisis hotlines:
 - HopeWorks of Howard County – 5457 Twin Knolls Road, Columbia, MD 21045. (410) 997-2272; (800) 752-0191; <http://www.wearehopeworks.org/>
 - Howard County Police Victim Assistance Section – Southern District Station, 11226 Scaggsville Road, Laurel, Maryland. (410) 313-3712; <http://www.howardcountymd.gov/departments.aspx?Id=6442458445>
 - Nearest hospitals equipped with the Department of State Police Sexual Assault Evidence Collection Kit:
 - Howard County General Hospital, 5755 Cedar Lane, Columbia, MD 21044
 - Laurel Regional Hospital, 7300 Van Dusen Rd, Laurel, MD 20707

MUIH will develop memoranda of understanding with:

- Howard County Police Department that complies with the relevant provisions of Title IX of the Education Amendments of 1972 and clearly states when MUIH will refer a matter to local law enforcement.
- A Maryland state designated rape crisis program, federally recognized sexual assault coalition, or both, that formalizes a commitment to provide trauma-informed services to victims of sexual assault and improve the overall response to sexual assault by MUIH.

Talk with the Title IX Coordinator about your options. The Title IX Coordinator will review your options and support resources both on and off campus.

VI. PROCEDURE FOR REPORTING VIOLATIONS OF THIS POLICY

A. Reporting to MUIH

Any member of MUIH's community, faculty, staff or student who wishes to report an incident of discrimination, harassment or sexual misconduct as defined above should first bring this matter to the appropriate MUIH representative listed below. Under no circumstances is an individual required to report discrimination, harassment, and/or sexual misconduct to a supervisor or academic instructor who is the alleged perpetrator. The persons charged with handling and investigating discrimination, harassment and/or sexual misconduct complaints may consult with legal counsel at any point during the process. The procedures should be followed in as confidential and sensitive a manner as possible in order to protect all of the individuals involved.

There may be situations or circumstances when a member of MUIH's community is subjected to discrimination, harassment and/or sexual misconduct, but does not wish to come forward or pursue a complaint, or when a person observes discrimination, harassment and/or sexual misconduct directed at another member of MUIH's community. MUIH will do all it can to respect the victim's wishes, but may proceed to address allegations of discrimination, harassment, and/or sexual misconduct if and when MUIH administrators become aware of such allegations, especially where the circumstances present a threat of harm or injury to the victim or other members of the community.

To make a report to MUIH under this policy contact:

Jennifer Yocum, Title IX Coordinator:

Phone number: (410) 888-9048, extension 6682

Office address: 2nd Floor, 7750 Montpelier Road, Laurel, MD 20723

Email address: jyocum@muih.edu

Reports can be submitted orally or in writing.

In addition to reporting a violation of this policy to MUIH, a complainant may also file a complaint with the Equal Employment Opportunity Commission and/or the United States Department of Education's Office for Civil Rights.

B. Interim Measures

MUIH may take whatever measures deemed necessary in response to an allegation in order to protect an individual's rights and personal safety and the safety of MUIH's community. Such measures include, but are not limited to, an interim suspension (immediate, temporary suspension pending the outcome of the grievance process), a no-contact directive, and/or appropriate changes in academic schedule, work location, or any other steps that may be necessary based on the circumstances, as well as direct the individual to resources that can assist with obtaining any necessary changes in housing resources. Interim measures also may include reporting the matter to the local police. Reporting to the police will be decided on a case-by-case basis. The Respondent's failure to adhere to the parameters of any interim measure is a violation of MUIH policy and may lead to additional disciplinary action. Interim measures will be determined by:

1. If the Respondent is a student: Provost, in consultation with the Title IX Coordinator
2. If the Respondent is a faculty member: Director of Human Enrichment, in consultation with the Title IX Coordinator
3. If the Respondent is a staff member: Director of Human Enrichment, in consultation with the Title IX Coordinator

Such interim measures may be imposed:

- In instances where it is determined that the Respondent poses a potential threat to another;
- To ensure the safety and well-being of members of MUIH's community and/or preservation of MUIH property;
- To ensure the Complainant's and/or Respondent's own physical or emotional safety and well-being; or
- If the Respondent poses a threat of disruption or interference with the normal operations of MUIH.

C. Support Person

Each party may each have a support person present with them at all meetings and any hearing associated with a complaint and in which the respective individual is participating.

For complaints concerning dating violence, domestic violence, stalking, and sexual assault, each party may be accompanied by an advisor (attorney, current MUIH faculty member, current MUIH student, or current MUIH staff member) of each party's choice.

For complaints that do not include allegations of dating violence, domestic violence, stalking, and sexual assault, the support person must be a current MUIH faculty member, current MUIH student, or current MUIH staff member, except that, if any party who faces potential criminal charges related to the complaint, that party may have an attorney present as a support person.

For all types of complaints, the advisor and/or support person may not be any individual with a real or potential conflict of interest and/or an individual with a role in adjudicating the pending matter, including but not limited to the following individuals: the Investigator for the Complainant's complaint; any witness for Complainant's complaint; a member of the Panel (as defined below) for Complainant's complaint; a member of the Appeal Committee (as defined below) for Complainant's complaint; the Title IX Coordinator; or any individual who may impose sanctions for Complainant's complaint. For all types of complaints, the advisor and/or support person may attend, but shall not participate in, meetings or the hearing. In such cases, an advisor and/or support person will only be permitted in a non-participatory advisory role and any costs incurred in retaining such advisor and/or support person shall be borne by the party who designated the advisor and/or support person..

D. Informal Complaint Procedure

NOTE: The informal procedure is not appropriate for and will not be used in the case of sexual misconduct including sexual assault, sexual exploitation, dating violence, domestic violence, and stalking.

When an incident arises in which a person feels that he/she has been subjected to sexual harassment as defined in this policy, it should be addressed as soon as possible. In many cases, informal actions can be taken that will effectively stop the Respondent's misconduct; however, informal resolution is never required. The Complainant may choose to but is not required to confront the Respondent, making it clear that the Complainant does not want any further incidents to occur. If this does not stop the misconduct, or if the Complainant needs help in the process, the Complainant should contact the Title IX Coordinator.

The Title IX Coordinator can provide the Complainant with support and advice on how to confront the Respondent and how to discourage any further misconduct.

The Complainant may proceed as follows with an informal complaint:

1. Meeting. The Complainant may request a meeting with the Respondent with a third party present to witness the conversation. The Respondent may also bring a third party to the meeting. A third party is a witness to the conversation and shall not be anyone who may be a witness regarding the Complainant's complaint should a formal investigation become necessary, or who has any other type of conflict of interest regarding the Complainant's informal complaint or potential future formal complaint. The Complainant and Respondent shall notify the Title Coordinator in advance as to whether they desire the presence of a third party and will inform the Title IX Coordinator of the identity of and contact information (email address and telephone number) for the third party. The Title Coordinator, with advice of MUIH's general counsel, will ensure that the

suggested third parties do not have any conflict with regard to Complainant's complaint. If such conflict is determined, the Title IX Coordinator shall notify the Complainant or Respondent, as appropriate and request that he/she designate another third party who does not have a conflict of interest regarding the Complainant's complaint.

The Title IX Coordinator will arrange the meeting with the Respondent and the third party and will attend the meeting. The Title IX Coordinator will be present at the meeting only to provide guidance regarding the informal complaint process. The third party witness(es) to the conversation shall not serve as a support person for either Complainant or Respondent during the informal complaint process and/or the meeting with Complainant and Respondent. Therefore, the third party may not participate in the informal process, including the meeting of Complainant and Respondent.

2. If the matter is resolved, no sanctions will be imposed. Informal Mediation. The Complainant may request an informal mediation to resolve the matter which may result in a written agreement between the parties. Other remedial action may be agreed upon by the Complainant and Respondent. The mediator, with no conflict of interest regarding Complainant's complaint or future potential formal complaint, shall be selected by the Title IX Coordinator in consultation with MUIH's general counsel. The mediator will not prescribe a resolution. The purpose of the mediator is to aid the Complainant and the Respondent in resolving the matter. The Title IX Coordinator shall arrange the mediation and be present at the mediation, only to provide guidance regarding the informal complaint process. Neither Complainant nor Respondent may bring a third party witness to the mediation. If the matter is resolved via mediation, no sanctions will be imposed. The Title IX Coordinator shall retain a copy of the mediation agreement and signed originals of the mediation agreement will be given to the Complainant and the Respondent.

The Title IX Coordinator will make every effort to process informal complaints in a timely manner.

At any time, the Complainant or the Respondent may end the informal process and begin the formal complaint procedure provided in this policy. The formal complaint procedure may also be started if the informal complaint procedure has not resulted in satisfactory resolution for the either party.

The Title IX Coordinator shall keep a log of all informal complaints and whether they are resolved or whether they result in a formal complaint.

Role of MUIH General Counsel in the Informal Complaint Process: In addition to advice regarding conflicts of interest, general counsel may provide advice to Complainants, Respondents and/or the Title IX Coordinator regarding the informal complaint process and will not provide advice regarding the facts or substance of the matter or suggested resolution of the matter.

E. Reporting to Local Law Enforcement

In cases involving potential crimes, including sexual assault, dating or domestic violence or stalking, individuals are encouraged to file a report with the local police department. Campus staff will assist individuals with contacting local law enforcement authorities, and upon request, will provide transportation assistance.

MUIH's grievance procedures and the legal system work independently from one another and MUIH will proceed with its process, regardless of action or inaction by outside authorities. Decisions made or sanctions imposed through these grievance procedures are not subject to change because criminal or civil charges arising from the same conduct are dismissed, reduced, or rejected in favor of or against the Respondent.

In certain instances, MUIH may need to report conduct to law enforcement authorities even when the subject of the conduct has not decided to do so. Such circumstances include incidents that warrant the undertaking of additional safety and security measures for the protection of the victim and the campus community or other situations in which there is clear and imminent danger.

F. Formal Complaint Procedure

Prompt reporting of a complaint of discrimination, harassment, and/or sexual misconduct as defined in this policy is strongly encouraged, as it facilitates faster resolution. However, MUIH may need to investigate and take appropriate action in response to all report regardless of when the alleged conduct occurred. The ability of MUIH to respond is limited if the Respondent is no longer a member of the MUIH's community. If an MUIH staff member, faculty member or student leaves MUIH with a pending complaint against them, they will not be permitted to return to MUIH until the case is resolved through these grievance procedures.

The following outlines the formal complaint procedure that will be used to address violations of this policy and any appeals based on the same. No other available grievance or appeals procedures may be applied to violations covered under this policy. Further, no additional sanctions will be imposed for violations covered under this policy.

Upon receipt of a report of a violation of this policy, MUIH will activate the following grievance procedures:

1. Reports or complaints of alleged violations of this policy should be submitted to the Title IX Coordinator
2. Within five (5) business days, unless unusual or complex circumstances exist, the Title IX Coordinator will meet with the Complainant to review the complaint, related policies, and these grievance procedures. The Title IX Coordinator will also identify support resources and interventions or interim measures available to the Complainant.
3. In cases where the alleged violation is reported to MUIH by a third party, the victim will be notified by the Title IX Coordinator that a complaint has been received. The Title IX Coordinator will meet with the victim to discuss his/her options and resources at MUIH and in the community.

4. Within three (3) business days of meeting with the Complainant, unless unusual or complex circumstances exist, the Title IX Coordinator will appoint a trained investigator ("Investigator") to conduct a thorough, impartial and prompt investigation of the complaint and prepare a report of the investigation (the "Investigator's Report"). The investigation and the Investigator's Report shall be completed within thirty (30) days from the date on which MUIH is notified of the complaint by the Complainant, unless unusual or complex circumstances exist.

5. The Investigator, in consultation with the Title IX Coordinator, will establish a timeline and process for the investigation including a plan for notifying the Respondent. The Investigator will conduct interviews as needed with Complainant, Respondent, and all appropriate individuals that the Investigator in his/her discretion decides should be interviewed, and will gather any pertinent evidentiary materials.

Upon completion of the Investigation, the Investigator will prepare a report detailing the Investigation including a summary of the interviews and the evidentiary materials gathered. Based on the results of the Investigation, the Investigator will make an appropriate finding based on a preponderance of the evidence, either:

1. It is more likely than not that the alleged conduct did not occur and the Respondent is not responsible for violating this policy; or

2. It is more likely than not that the alleged conduct did occur and the Respondent is responsible for violating this policy.

The Investigator will share the Investigation Report and findings with the Title IX Coordinator.

If the Investigator finds that the Respondent is not responsible for a policy violation, the Investigation shall be closed and the Title IX Coordinator shall notify the Complainant and Respondent of this outcome, within the same 24-hour period, consistent with MUIH's obligations under FERPA and the Clery Act.

In some circumstances involving a finding of no violation, MUIH may institute other forms of remedial and/or community-based responses, such as educational initiatives and/or trainings, as the Provost (when the Respondent is a student) or the Director of Human Enrichment (when the respondent is faculty or staff), each in consultation with the Title IX Coordinator, determines appropriate under the circumstances.

If the Investigator finds that the Respondent is responsible for a violation of this policy, then the Title IX Coordinator will present a summary of the Investigator's Report to the Respondent and the Complainant separately, within the same 24-hour period.

Each party may accept the findings as presented, accept the findings in part and reject them in part, or reject all of the findings. When the Investigator finds that the Respondent is responsible for a violation of this policy, if both parties accept the findings, the Provost or designee in the case of a Respondent who is a student and the Director of Human Enrichment or designee in the case of a Respondent who is faculty or staff member will impose sanctions appropriate for the violation(s). When the Respondent is a third party, the Vice President for

Administration and General Counsel will impose sanctions appropriate for the violation(s). See, Sanctions (below).

If either party rejects the findings in part or entirely, the Title IX Coordinator will forward the complaint to the Panel (as defined below) for a formal hearing in accordance with the *Formal Hearing Process* section below. In cases in which one or both parties accept some findings and reject others, the findings accepted by the parties will stand and the hearing will be convened solely to resolve the contested findings.

A Respondent who is a third party (not faculty, staff, or student of MUIH) is not entitled to a hearing or appeal under this policy.

Role of MUIH General Counsel During the Investigation: General counsel shall ensure that the Investigator has no conflicts of interest with regard to the case. General counsel also shall provide advice to the Title IX Coordinator and the Investigator only as to procedural matters concerning the investigation and not regarding the substance, facts, or findings of the case.

G. FORMAL HEARING PROCESS

Formal complaints of discrimination, harassment, and/or sexual misconduct as defined by this policy will be received and decided by a three-person panel ("Panel"). The Panel is charged with conducting a hearing to determine, based on a preponderance of the evidence, whether or not the Respondent violated any MUIH policy specific to the alleged conduct. Panel members and alternate members shall be appointed for up to two-year terms by MUIH's President. In addition, each Panel shall include one of the following administrators, unless the administrator recuses himself/herself due to a conflict of interest or MUIH's general counsel determines that any of the following Panel members may have a conflict of interest:

- When the Respondent is a student, the Director of Human Enrichment, who shall serve as chair for the hearing.
- When the Respondent is a faculty member, the Provost, who shall serve as chair for the hearing.
- When the Respondent is a staff member, the Provost, who shall serve as chair for the hearing.

If MUIH's general counsel determines that any of the above two named administrators has a conflict of interest in serving as chair for any case, the President shall designate another individual as chair.

The alternate members shall serve on a panel when one of the appointed members is unavailable or must be recused from a particular case due to conflict of interest. All panel decisions shall be made by majority vote.

Both parties shall be given the opportunity to respond to the issues before the Panel. Such response may be in writing or in person, and shall be made within the timeframe established by the Panel. The parties will be permitted to make a statement to the Panel. The Panel will call

witnesses as it determines necessary. Either the Panel or the Chair may ask questions of any witnesses as the Chair determines are appropriate. The Panel may ask for statements from other parties and for relevant MUIH records or other evidentiary materials as needed.

The Panel shall then meet in private to review the Investigator's Report and recommendation, any responses made by the parties, and any other evidence presented at the hearing.

The Panel will then determine an appropriate finding based on a preponderance of the evidence either that: (1) it is more likely than not that the alleged conduct did not occur and the Respondent is not responsible for violating MUIH policy; or (2) it is more likely than not that the alleged conduct did occur and the Respondent is responsible for violating MUIH policy.

If the Panel finds that a violation occurred, it will issue a written decision that includes the imposition of sanctions, if a violation is found. In determining sanctions, the Panel will take into account any previous violations of this policy.

Notification of Decision: If the Respondent is an MUIH employee, copies of the written decision are provided to the Complainant and the Respondent to the extent appropriate, within the same 24-hour period.

If the Respondent is a student, a copy of the written decision is provided to the Respondent. Within the same 24-hour period in which the student Respondent receives a copy of the written decision, the Complainant shall be advised of the Panel's decision to the extent permitted by the provisions of FERPA and required by the Clery Act.

H. **SANCTIONS**

1. **Sanctions in informal process**

In consultation with the Title IX Coordinator, the Provost in the case of a Respondent who is a student or the Director of Human Enrichment in the case of a Respondent who is faculty or staff may consider the following in determining sanction(s): the nature of and the circumstances surrounding the violation, the Respondent's prior disciplinary record, precedent cases, MUIH safety concerns and any other information deemed relevant. The sanction(s) will be structured to end the conduct, prevent its recurrence, and remedy its effects on the Complainant and MUIH's community. The Provost or Director of Human Enrichment will render a sanction decision within five (5) business days of receiving the Investigator's findings. Not all violations will be deemed equally serious offenses, and MUIH reserves the right to impose different sanctions, ranging from warning to expulsion/termination, depending on the severity of the offense. MUIH will consider the concerns and rights of both the Complainant and the Respondent. Where appropriate, the sanctions will be reported to the Complainant and the Respondent in writing within the same 24-hour period. The sanction(s) imposed will be implemented immediately and will be in effect pending the outcome of any hearing or appeal as provided for in this policy. Sanctions for faculty, staff, and students of MUIH are as set forth in this policy. Sanctions for Respondents who are third parties (not faculty, staff, or students of

MUIH) are up to and including removal from campus and termination of contractual arrangements. For a list of possible sanctions, see section 3 below.

Role of MUIH General Counsel Regarding Sanctions: General counsel shall ensure that the administrator deciding upon sanctions has no conflicts of interest with regard to the case. General counsel also shall provide advice to the administrator only as to procedural matters concerning the sanctions and not regarding the selection of particular sanctions.

2. **Sanctions following Panel Hearing**

If the Panel determines that the Respondent has violated the discrimination, harassment, and/or sexual misconduct policy, the appropriate administrator (Provost when Respondent is a student and Director of Human Enrichment when Respondent is faculty or staff) shall implement any sanctions imposed by the Panel. The Director of Human Enrichment shall institute sanctions for faculty and staff together with the Respondent's supervisor and/or academic department head.

3. **Sanctions may include, but are not limited to:**

Students: Sanctions imposed upon students who are determined to have violated this policy may include a variety of institutional responses or requirements, including, but not limited to, the following: written letter of warning, not being allowed to represent the MUIH in volunteer or paid work, restitution, required attendance at educational programs, required assessment or counseling, restriction of privileges, probation, suspension and/or expulsion, and any other sanctions listed in the Code of Student Conduct or deemed appropriate under the circumstances.

Faculty: An oral warning, a written warning, a letter of reprimand, mandatory attendance of an educational program on discrimination, harassment, and/or sexual misconduct, mandatory referral for psychological assessment and compliance with any resulting treatment plan, restriction of responsibilities, reassignment, denial of salary increase, suspension without pay, or dismissal.

Staff: An oral warning, a written warning, a letter of reprimand, mandatory attendance of an educational program on discrimination, harassment, and/or sexual misconduct, mandatory referral for psychological assessment and compliance with any resulting treatment plan, restriction of responsibilities, reassignment or transfer to another department, denial of salary increase, suspension without pay, final written warning, or termination.

The sanctions described in this policy are not exclusive of and may be in addition to other actions taken or sanctions imposed by outside authorities. Sanctions imposed will be determined on the basis of the facts and the extent of harm to the individuals involved and MUIH's interests. The sanctions imposed will be implemented immediately and will be in effect pending the outcome of any appeal.

I. AMNESTY

Disciplinary sanctions for a violation of the Code of Student Conduct may not be imposed upon a student who files a complaint for sexual assault or who participates in an investigation as a witness, unless MUIH determines that (1) the Code of Student Conduct violation occurred at or near the time of the alleged sexual assault, and (2) the Code of Student Conduct violation was an act that was reasonably likely to place the health or safety of another individual at risk.

Role of MUIH General Counsel in the Formal Hearing Process: In addition to determining conflicts of interest with regard to the Hearing Panel, general counsel shall provide advice to the Hearing Panel with regard to process and procedural matters and not regarding the substance, facts, or findings of the case.

VII. APPEALS

Either party may appeal the Panel's decision as described below:

An appeal is not intended to be a new investigation or a full re-hearing of the complaint. In most cases, an appeal is confined to a review of the written documentation and/or record of the Investigation and/or hearing and pertinent documentation regarding the grounds for appeal. An appeal is not an opportunity for the Appeal Committee (as defined below) to substitute its judgment for that of the Investigator or the Panel merely because the Appeal Committee disagrees with the finding and/or sanction. Appeal decisions are to be deferential to the Investigator and the Panel, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so.

Grounds for Appeal: Disagreement with the finding or sanctions is not, by itself, grounds for an appeal. The ONLY grounds upon which an appeal may be made are:

- **Procedural Error:** A procedural error occurred that significantly impacted the outcome of the hearing as it applies to the appealing party (e.g. substantiated bias, material deviation from established procedures, etc.). A description of the error and its impact on the outcome of the case as it applies to the appealing party must be included in the written appeal.
- **New Information:** New information has arisen which was not available or known to the appealing party during the investigation or hearing and that could have substantially impacted the original finding or sanction(s) had it been available at that time. Information that was known to the appealing party at the time of the investigation or hearing but which they chose not to present is not new information. A summary of this new evidence and its potential impact on the findings and/or sanctions must be included in the written appeal; or
- **Disproportionate Sanction(s):** The sanctions imposed are substantially disproportionate to the severity of the violation(s). An explanation of why the sanction(s) are disproportionate to the severity of the violation must be included. Mere dislike or disagreement with the sanction(s) or the impact of the sanction(s) on the appealing party is not grounds for an appeal.

Time and Procedure for Submitting an Appeal: The written appeal should be submitted to the Title IX Coordinator within two (2) business days following the notification of the Panel's decision. The non-appealing party will receive notice of the appeal from the Title IX Coordinator within three (3) business days and will have two (2) business days to submit a written response to the appeal to the Title IX Coordinator. If the appeal is related to disproportionate sanctions, the administrator who determined the sanction will have two (2) business days to submit a written explanation for the sanctioning decision to the Title IX Coordinator for submission to the Appeal Committee.

Appeal Committee: The Title IX Coordinator will refer the appeal to the Appeal Committee which is comprised of the Vice President for Institutional Development and Chief Values Officer, who serves as Chair, and two members of the Panel designated by the President who were not involved in the formal hearing. In cases where the Vice President for Institutional Development and Chief Values Officer has a conflict of interest with the case as determined by MUIH's general counsel or recuses himself/herself due to a conflict, the Vice President for Marketing and Enrollment Management serves as Chair. If MUIH's general counsel determines that the Vice President for Marketing and Enrollment Management or the Vice President for Marketing and Enrollment Management has a conflict of interest with the case, then the President shall designate another individual as Chair.

Appeal Consideration Options: Based on its review of the case and appeal statements, the Appeal Committee will determine if the grounds for the appeal are substantiated. If the grounds for appeal are not substantiated, the appeal will be denied and both parties will be notified in writing. If the appeal is substantiated, the Appeal Committee will take appropriate action as indicated below.

Appeal Process for Procedural Error: If the Appeal Committee determines that a procedural error occurred that was substantially prejudicial to the outcome of the hearing, it may return the complaint to the Panel with instructions to reconvene to cure the error. In rare cases where the procedural error cannot be cured by the Panel (as in cases of bias), the Appeal Committee may order a new investigation with a new investigator only if deemed necessary by the Appeal Committee or a new hearing with a new Panel. The results of a new investigation or new hearing can be appealed once, on the applicable grounds for appeals.

Appeal Process for New Information: If the Appeal Committee determines that new information should be considered, it will return the complaint to the Panel to reconsider the complaint in light of the new information only.

Appeal Process for Disproportionate Sanction(s): If the Appeal Committee determines that the sanctions imposed are substantially disproportionate to the severity of the violation(s), the Appeal Committee may modify the sanctions as appropriate within the bounds of this policy.

Appeal Committee's Decision: The Appeal Committee will render a decision within ten (10) business days after the later of (i) the receipt of the formal appeal, (ii) the response from the other party, or (iii) when the appeal is based on the sanction, the response from the administrator who determined the sanction (Provost or Director of Human Enrichment). The Appeal Committee's decision is final and an appeal will not be considered further.

Information to Parties: All parties will be informed of the status of requests for appeal in a timely manner and shall be informed of the outcome as appropriate within the same 24-hour period.

Role of MUIH General Counsel in the Appeal Process: In addition to determining conflicts of interest with regard to the Appeal Committee, general counsel shall provide advice to the Appeal Committee with regard to process and procedural matters and not regarding the substance regarding the appeal.

VIII. CONFIDENTIALITY AND MANDATORY REPORTING

Cases involving violations of this policy are particularly sensitive and demand special attention to issues of confidentiality. Those responsible for carrying out the responsibilities outlined in this policy will respect the confidentiality and privacy of the individuals involved, and will keep identities and information confidential to the extent reasonably possible. Those individuals reporting, involved in, Complainant of, Respondent of, or otherwise involved in a complaint regarding any alleged violation of this policy are also required to keep the matter confidential. Absolute confidentiality may not be possible in all circumstances, including but not limited to when MUIH is required to disclose information in response to legal process, when MUIH is legally mandated to report an alleged violation to police or other authorities (including when the alleged violation involves a minor or vulnerable adult), or when MUIH has a need to protect the rights of others (including when the alleged violation involves a minor or a vulnerable adult). Often, the Complainant or a person reporting or otherwise concerned about an alleged violation of this policy wants the conversation to be considered confidential or off the record. Confidential resources are available for those who wish for absolute confidentiality, and these resources are:

- HopeWorks of Howard County – 5457 Twin Knolls Road, Columbia, MD 21045.
(410) 997-2272; (800) 752-0191; <http://www.wearehopeworks.org/>

Faculty and staff are required to report incidents that may give rise to allegations under this policy to the Title IX Coordinator.

IX. ANONYMOUS COMPLAINTS

MUIH will reasonably respond to all allegations of discrimination, harassment, and/or sexual misconduct. However, due to the inherent difficulty of investigating and resolving allegations from unknown persons, it may difficult for MUIH to resolve an anonymous complaint and pursue appropriate response to these allegations if a Complainant insists that his or her name not be revealed.

X. FRIVOLOUS COMPLAINTS PROHIBITED

The purpose of this policy is to promote and maintain an environment at MUIH that is free from discrimination, harassment, and/or sexual misconduct. Any member of MUIH's community who believes that he/she has been subjected to discrimination, harassment, and/or sexual misconduct is encouraged to use the procedures provided in this, not only for the benefit and protection of that individual, but ultimately for the entire MUIH community. However, false charges of discrimination, harassment, and/or sexual misconduct undermine the purpose and

effectiveness of this policy. Accordingly, persons who knowingly make false charges of discrimination, harassment, and/or sexual misconduct may be subject to disciplinary action. The failure of a complaint to result in a finding of discrimination, harassment, and/or sexual misconduct is not alone evidence that the charges were knowingly false.

XI. TRAINING

MUIH prohibits domestic violence, dating violence, sexual assault, sexual harassment, and stalking. MUIH is committed to providing effective educational and training programs to as a key component in maintaining an environment free from discrimination, harassment, and sexual misconduct. This policy will be available via MUIH's website, as well as be included in other sources of media as is deemed appropriate. MUIH will provide educational programs for all new students, faculty, and staff (including student employees) on the following: discrimination; harassment; the definition of consent in reference to sexual activity; safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervention when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than the bystander; information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and sexual misconduct. Periodic refresher, prevention, and awareness programs will also be provided, as will training to individual with specific responsibilities as defined within this policy to ensure their ability to carry out those responsibilities effectively.

The Title IX Coordinator, Investigators, members of the Panel, members of the Appeal Committee, and any other individual with responsibilities under this policy shall receive training as required to carry out their roles under this policy.

XII. RECORD RETENTION

Records of investigations and hearings are maintained by MUIH for five (5) years as indicated below:

Students: If the Respondent is a student, the records will be maintained for five (5) years past the student's graduation or if the student leaves MUIH before graduation, for five (5) years past their original expected graduation date.

Faculty or Staff: If the Respondent is a faculty or staff member, the records will be maintained for five (5) years past the conclusion of the investigation and any hearing.

XIII. INFORMATION CONCERNING REGISTERED SEX OFFENDERS

As required by the federal Campus Sex Crimes Prevention Act, institutions of higher education must issue a statement advising Institution community members where information concerning registered sex offenders may be obtained. Persons convicted of certain sex offenses are required by law to register with the State. Information on registered sex offenders in Maryland is available at: <http://www.dpscs.state.md.us/sorSearch/search.do>. The Department of Justice National Sex Offender Public Website is also a source for sex offender

information. For information on registered sex offenders attending or employed at MUIH, contact the local police department or the Title IX Coordinator.

P:\DIV 53 - Compliance\Standards and Practices\In Progress\Title IX - Sexual Misconduct\MUIH Sexual Harassment Sexual Misconduct and Retaliation-JY edits LG edits_093015.docx

VIOLATIONS OF THIS POLICY OR QUESTIONS ABOUT THIS POLICY SHOULD BE DIRECTED TO THE TITLE IX COORDINATOR, JENNIFER YOCUM AT JYOCUM@MUIH.EDU OR (410) 888-9048, EXTENSION 6682 OR (443) 340-0167