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Interim Procedures for Reporting and Responding to Reports of Sexual Misconduct,  
Interpersonal Violence, and Other Related Misconduct **When the Responding Party  
is a Staff Member**

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Procedures Effective Date:	August 24, 2015
Procedures Amended Effective Dates:	August 30, 2017 and <b>August 30, 2019</b>
Version:	Staff Procedures Version III
Responsible Offices:	Office of Human Relations Office of the General Counsel

## **I. Overview**

The Procedures for Reporting and Responding to Reports of Sexual Misconduct, Interpersonal Violence, and Other Related Misconduct When the Responding Party is a Staff Member<sup>1</sup> (“Procedures”) assists to ensure the University of Maryland, Baltimore County’s (“the University” or “UMBC”) compliance with Federal and State law, as well as University System of Maryland (“USM”) and University policies prohibiting discrimination based upon sex (including pregnancy), sexual orientation, gender, and gender identity or expression. Specifically, these Procedures set forth a process for reporting, investigating, responding to, and adjudicating complaints of Sexual Misconduct, Interpersonal Violence, and Other Related Misconduct, including Sexual and Gender Based Harassment, Sexual Violence (including Sexual Assault and Sexual Coercion), Sexual Exploitation, and Sexual Intimidation), Interpersonal Violence (including Relationship Violence (Dating Violence) and Domestic Violence), Stalking, and Retaliation (collectively hereafter referred to as “**Prohibited Conduct.**”

Please refer to the University Policy on Prohibited Sexual Misconduct, Interpersonal Violence, and Other Related Misconduct (hereafter referred to as the “Policy”) for applicable definitions of Prohibited Conduct, as well as key terms and obligations.<sup>2</sup>

THESE PROCEDURES REPLACE ANY PRIOR UNIVERSITY PROCEDURES RELATED TO COMPLAINTS, INVESTIGATION AND ADJUDICATION OF ANY REPORT OF PROHIBITED CONDUCT COVERED BY THE POLICY AGAINST ANY STAFF MEMBER.

## **II. Effective Date of Procedures**

The effective date of the Procedures is August 30, 2019. The Procedures will apply in all cases where a report of Prohibited Conduct under the Policy is made on or after August 30, 2019.

Where the date of the reported incident of Prohibited Conduct precedes the effective date of the Procedures, the definitions of Prohibited Conduct in existence at the time of the alleged conduct will be used. The Procedures will be used to investigate and resolve all reports/complaints of Prohibited Conduct, regardless of when the reported Prohibited Conduct occurred, *unless, the Procedures adversely impact the rights of at least one of the parties and an objection to the use of the Procedures is made.*

## **III. Timeframe for Reporting Prohibited Conduct**

Although the University does not limit the timeframe for reporting an incident, it encourages prompt reporting of incidents of Prohibited Conduct to maximize the University’s ability to respond effectively. If the Responding Party is no longer attending the University at the time of the report, to the extent practicable as determined by the University, an inquiry as to what occurred may proceed, and the University’s ability to take direct action against the Responding Party may be limited or absent.

In each instance, the University will still provide any fair and reasonable support and resources to a Reporting Party. The University will also help a Reporting Party identify external reporting options and support and resources, if desired.

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<sup>1</sup> These procedures apply to individuals whose primary role on campus is that of a Staff Member.

<sup>2</sup> Capitalized terms herein are defined in UMBC’s Policy on Prohibited Sexual Misconduct, Interpersonal Violence, and Other Related Misconduct, amended effective August 26, 2019.

#### **IV. Interim Protective Measures**

Interim Protective Measures are temporary actions taken by the University prior to and during the investigation and adjudication processes, which may be applied to the Reporting Party, Responding Party, and other involved UMBC community members, who have been adversely affected, to ensure their safety and well-being, to limit undeterred campus educational and employment access, and to ensure the integrity of the investigative and/or adjudicative processes.

Interim Protective Measures are taken based on the information available at the time and are not intended to be permanent resolutions. Interim Protective Measures may be withdrawn or amended as additional information is discovered. The University will take appropriate, responsive, and prompt action to enforce Interim Protective Measures and to respond to any reports about the inadequacy or failure of another UMBC community member to abide by the Interim Protective Measures. The range of Interim Protective Measures can include, but are not limited to:

- Restricting access to the University or to certain University facilities, resources, or activities pending resolution of the report, for the Responding Party;
- University-imposed leave or suspension for the Responding Party; and
- Imposition of a campus “No Contact Order.”

#### **V. Supportive Measures**

Supportive measures are available to the Reporting Party, Responding Party, and other involved UMBC community members who have been adversely affected, regardless of whether a formal investigation takes place. The range of Supportive Measures can include, but are not limited to:

- Access to counseling and medical services and assistance in setting up initial appointments, both on and off campus;
- Imposition of a campus “No Contact Order;” and
- Change in work schedule, work location or job assignment, if such alternatives are available and feasible.

#### **VI. Interim Suspension or Restriction from University Property**

A Responding Party may be suspended or restricted from University Property for an interim period pursuant to a matter under these Procedures. The Associate Vice President of Human Resources, or a designee, in consultation with the Title IX Coordinator, may initiate this action. The interim restriction is effective without prior notice, when there is evidence that the continued presence of the Staff Member on University Property, or in specific facilities, poses a substantial threat to themselves, or to others, or to the stability and continuance of normal University functions.

A Responding Party may request a reconsideration of the interim suspension or restriction decision. This request must be submitted in writing to the Associate Vice President of Human Resources, or designee. A response to the request will be issued to the Responding Party within **five (5) business days** from the date of receipt of the request. The reconsideration shall examine the following issues only:

- the reliability of the information concerning the Responding Party’s conduct, including the matter of identity; and

- whether the alleged conduct and surrounding circumstances reasonably indicate that the continued presence of the Responding Party on University Property, or in a specific campus facility, poses a substantial threat to themselves or to others or the stability and continuance of normal University functions.

## **VII. Timeframe for Resolution<sup>3</sup>**

If the University has determined that Prohibited Conduct may have occurred, the institution must take prompt and effective steps to eliminate the Prohibited Conduct, prevent its recurrence, and address its effects. The University will generally seek to resolve every report of Prohibited Conduct within sixty (60) calendar days after receiving the report, excluding any appeal. There may be circumstances that prevent the University from meeting the sixty (60) calendar day timeline. The timeframe may be extended by the University for good cause, as determined on a case-by-case basis, as necessary to ensure the integrity and completeness of an investigation, comply with a request by law enforcement, reasonably accommodate the availability of witnesses, reasonably accommodate delays by the parties, account for University closures, or address other legitimate reasons, including the complexity of the investigation (e.g. the number of witnesses and volume of information provided by the parties) and the severity and extent of the alleged Prohibited Conduct. When the University is unable to meet the sixty (60) calendar day timeline, the Parties will receive written notice regarding the extension.

## **VIII. Conflict of Interest**

The University requires all individuals involved in responding to, investigating, and/or adjudicating matters under the Procedures to disclose to the Human Relations Office/Title IX Coordinator any potential conflict of interest. A conflict of interest may arise when any of those persons, has been a participant or is related to a participant in the matter being investigated or reviewed, is related to or has had past substantial association with the Reporting Party or Responding Party, is biased, and/or lacks impartiality.

A Reporting Party or Responding Party who believes that an individual involved in responding to, investigating, and/or adjudicating matters under the Procedures has a conflict of interest, they must submit a written request, detailing with specificity the alleged conflict of interest, to the University's Title IX Coordinator, within three (3) calendar days after being notified of the Investigator, the Board of Review or Board of Appeal membership, or the Sole External Reviewer or Sole External Appeal Reviewer. The Human Relations Office/Title IX Coordinator will determine whether a conflict exists and what action, if any, should be taken to ensure a fair and impartial process.

Absent extenuating circumstances, failure to raise a conflict of interest allegation regarding the Investigator, an individual's membership on the Board of Review or Board of Appeal, or the Sole External Reviewer precludes a party from appealing the outcome, solely, based on the conflict of interest assertion.

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<sup>3</sup> Pursuant to the United States Department of Education Office for Civil Rights, September 2017 Q&A on Campus Sexual Misconduct (in effect at the time of publishing this Policy), a "prompt" investigation will be evaluated based upon a school's good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution."

## **IX. Access for Persons with Disabilities**

The University will provide reasonable accommodations to Staff with disabilities, to enable them to participate fully in the processes under the Procedures. Accommodations are determined on an individual basis by the Human Relations Office. Any Staff Member with a disability requiring an accommodation should notify the Title IX Coordinator, at minimum, seven (7) calendar days prior to any meeting scheduled under the Procedures.

## **X. The Process**

All written notices/communication issued to the Reporting Party and Responding Party under these Procedures will be hand-delivered, e-mailed, and/or mailed by certified, return receipt requested First Class Mail to the address of record as maintained by the Office of Human Resources.

### **A. Initial Review**

When a report is received, the Title IX Coordinator will promptly conduct an Initial Review. The Coordinator may consult with others when conducting the Initial Review. The Initial Review will assess whether the alleged Prohibited Conduct, if proven, would or would not constitute a violation under the Policy, as well as the appropriate route to resolve the report.

Based upon the information/facts gathered during the Initial Review, if it is determined that the alleged conduct, even if proven by a preponderance of the evidence, would NOT constitute a violation under the Policy, the Title IX Coordinator will promptly notify the Reporting Party, in writing, of this No Action Warranted determination. The Title IX Coordinator will provide the Reporting Party with the No Action Warranted notice, within ten (10) calendar days after the conclusion of the Initial Review. The Reporting Party will be advised of external reporting options, and if available, other University offices that may be able to address the report.

### **B. Manners of Resolution**

#### **1. Informal Intervention**

The University may address a report of alleged Prohibited Conduct through Informal Intervention. Informal Intervention under these Procedures does not involve an Investigation or formal disciplinary action against a Responding Party, and is not appropriate for all forms of reported Prohibited Conduct. Under No circumstances, may an allegation of Sexual Assault (I or II) or Sexual Coercion be addressed informally. The Reporting Party or Responding Party can request that the University address any other type of report informally. Further, the University reserves the right to address a report of Prohibited Conduct (excluding Sexual Assault I, Sexual Assault II, and Sexual Coercion) via an informal manner.

The Reporting Party or Responding Party may make a request to the Title IX Coordinator to informally address the report. The Title IX Coordinator, in consultation with the applicable University authorities, will determine if Informal Intervention is an appropriate mechanism to address the Prohibited Conduct, prevent its recurrence, and remedy its effects. Further, a determination will be made to assess whether utilizing Informal Interventions to address the report is consistent with maintaining the safety and welfare of the entire UMBC campus community. When a report is filed, the University retains the sole discretion in determining whether a case can be appropriately addressed informally.

Informal Interventions may include: establishing Interim Supportive Measures; issuing a No Contact Order; conducting targeted or broad-based educational programming or training for relevant

individuals or groups; providing increased monitoring, supervision, or security at locations or activities where the Prohibited Conduct occurred; facilitating a meeting with the Responding Party and the Reporting Party present if desired (in cases that do not involve Sexual Assault I or II and Sexual Coercion); and/or any other remedy that can be tailored to the involved individuals to transform the environment, prevent recurrence of the issues, remedy the effects of the particular complaint, and more generally achieve the goals of the Policy.

In some forms of addressing the matter informally, the remedies imposed will focus on supporting the Reporting Party with no participation or involvement by the Responding Party. In other forms, the Responding Party may be asked to participate or be involved. Depending on the type of remedy used, it may be possible for a Reporting Party to maintain anonymity.

The University will not compel a Reporting Party to engage in mediation, to confront directly the Responding Party, or to participate in any particular manner to informally address the report. Participation is a choice. Mediation, even if requested, must NOT be used in cases involving Sexual Assault (I or II) or Sexual Coercion.

## **2. Investigation/Formal Intervention**

When the University has determined that it has Jurisdiction<sup>4</sup> over the Responding Party and the reported Prohibited Conduct, the University will investigate reports of Prohibited Conduct, which: 1. Have not been addressed informally; or 2. Have not been addressed differently in response to a Reporting Party requesting that no formal action be taken.

### **a. Preliminary Meeting**

Prior to the start of an investigation, the Title IX Coordinator or a designee will notify both parties, via electronic mail, and require their attendance at a Preliminary Meeting with the Title IX Coordinator or a designee. The parties will be informed that the purpose of the meeting is to provide the parties with information about the investigative and adjudicative processes, and to allow the parties an opportunity to ask and receive answers to any questions they may have about the processes.

Both the Reporting Party and Responding Party will be provided with a written copy of the Notice of Investigation (“NOI”) at the Preliminary Meeting. The Title IX Coordinator or a designee will review the NOI, which will generally contain a summary of the reported allegations or reported Prohibited Conduct at issue to the extent known, the date, time, and location of the reported incident, the identity of the parties involved, the range of potential violations under the Policy, and the range of potential sanctions under the Policy. Upon receipt of the NOI, or at any stage in the process, the Responding Party may choose to accept responsibility for the reported allegation.

Both the Reporting Party and Responding Party will be made aware of available campus and community resources, the University’s prohibition against retaliation, and guidance about how to report retaliatory conduct. Copies of the Policy and Procedures, and the available campus and community resources, will be sent to both parties via electronic mail, after the Preliminary Meeting.

If either party fails to attend the scheduled Preliminary Meeting with the Title IX Coordinator or a designee, the University will send the above information to that party via electronic mail, and the University will document in the record the party’s lack of attendance. A party’s failure to attend the

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<sup>4</sup> See Section II.C in the Policy.

Preliminary Meeting will not inhibit the Investigation from proceeding. Once the NOI has been sent to the parties, the Investigation begins.

#### **b. Investigators**

The Title IX Coordinator or designee will assign an internal and/or external (third-party) Investigator to conduct a prompt, thorough, fair, and impartial investigation. The University retains the authority and has the sole discretion in determining when to assign an internal and/or external (third-party) Investigator. The assigned Investigator will have training and experience investigating allegations of Prohibited Conduct and will have attended an annual training related to issues involving Prohibited Conduct.

#### **c. Overview of the Investigative Process**

During the investigation, both parties and any third-party witnesses will be treated with dignity, respect, and sensitivity by the assigned Investigator.

The investigation is an impartial fact-gathering process. The investigation is a very important phase of the process, as it affords the Reporting Party, the Responding Party, and any other individuals who have relevant information to share, an opportunity to meet and speak separately with the Investigator, to provide any relevant information, and to identify persons they believe the Investigator should speak with because they have relevant information to provide. The Investigator will specifically request that the Reporting Party and Responding Party, submit a list of questions that they would like the Investigator to ask of the other party; provide a list of witnesses (with a short statement regarding why they are relevant); and provide copies of any relevant evidence that they want considered as part of the investigative process.

Relevant evidence may include, but is not limited to text messages, records of phone calls, emails, pictures, notes, social media posts/materials, prior statements (sworn and unsworn), gifts, and other records. The Investigator will also utilize due diligence in obtaining any available physical or documentary evidence, including prior statements by the parties or witnesses, any communications between the parties, email messages, social media materials, text messages, and other records as appropriate and available. However, it is also the responsibility of the Reporting Party and Responding Party to identify and make the Investigator aware of any relevant physical or documentary evidence.

Because the University process is not a legal proceeding, the Investigator **does not have the power to subpoena** records. Further, if either party wishes for the Investigator to have access to their confidential medical records/file, the party will need to submit those records directly to the Investigator or complete a consent form for the release of their confidential medical records/file to the Investigator. Prior to the issuance of the Draft Report, the Investigator will not disseminate copies of any documents obtained as part of the investigation with either party, *except per the below*, but the Investigator may question either party and/or witnesses as it relates to matters that are included within such documents.

Typically, the Investigator will meet with the Reporting Party, then the Responding Party, and then any relevant witnesses. Based on the information obtained during the meeting, the Investigator may request a follow-up meeting with the Reporting Party, Responding Party, and/or any relevant witnesses. The Investigator will take notes of the information obtained during the investigative interviews/meetings. Upon request and within a reasonable time after the request, the Investigator will provide a written summary of the facts obtained/discussed during the interview/meeting to an individual for their review, related to their own interview/meeting. After reviewing the written

summary of the facts, the individual will be requested to sign the written summary of the facts, acknowledging receipt.

While not required per these Procedures, the investigative interviews/meetings *may also* be recorded, determined at the sole discretion of the University. The Investigator will inform all participants prior to the start of the interview/meeting if the interview/meeting will be recorded. A single recording will be made by the Investigator and will be the property of the University. The recording will be maintained by the Office of Human Relations. If a recording malfunction occurs during the interview/meeting, the Investigator will create a sufficiently detailed summary of the statement(s) obtained.

If an interview is recorded, a transcript of the recording will be made. The participant will be provided an opportunity and a reasonable, but limited amount of time to review the transcript of their own respective interview. However, there is a presumption that the information captured in the transcript is a complete and accurate record of the interview. After reviewing their own transcript, the individual will be requested to sign the transcript, acknowledging that the transcript is complete and accurate and that they have had an opportunity to review the transcript. Any individual who refuses to or fails to sign their transcript, their refusal and/or failure will be documented as part of the investigative file and the transcript will be presumed to be complete and accurate and that the individual had an opportunity to review their transcript.

#### **d. Relevance and Special Considerations**

The Investigator has the discretion to determine the relevance of any information, document, witness, question that is requested to be asked of the other party or a witness, or other evidence and may exclude or redact information and evidence from the investigative report(s) if the information is irrelevant, duplicative, immaterial, argumentative, or more prejudicial than informative. The Investigator will not exclude direct observations or reasonable inferences drawn from the facts.

Information related to the prior sexual history of either party is generally not relevant to the determination of a Policy violation. However, the prior sexual history between the parties may be relevant in very limited circumstances. For example, where there was a prior or ongoing relationship between the Reporting Party and the Responding Party, and where Consent is at issue, evidence as to the parties' prior sexual history as it relates to Consent may be relevant to assess the manner and nature of communications between the parties.

As specified in the Policy, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute Consent.

Sexual history will not be used for purposes of illustrating either party's individual character or reputation.

#### **e. Participation in the Investigative Process**

All UMBC community members, including students, faculty, and staff are expected to cooperate with an investigation of any report of Prohibited Conduct to assure fairness and procedural due process for the parties involved. The Investigator may also request the appearance of individuals from the University community who can provide relevant, specialized information/evidence.

Both a Reporting Party and a Responding Party may decline to participate in the processes outlined under the Procedures. The Investigator, in consultation with the Title IX Coordinator, will determine



whether the investigation and/or adjudication can and/or will proceed without the Reporting Party, pursuant to the factors set out in Section XIII of the Policy. However, if a Responding Party voluntarily declines to participate and/or stops participating, the University retains the authority and sole discretion to move forward with the investigation and/or adjudication under the Procedures, without the Responding Party's participation.

#### **f. Timeframe for the Investigative Process**

The timeframe for completion of the Investigation, or any designated timeframes for steps in the investigation, may be extended as necessary to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement, to reasonably accommodate the availability of witnesses, reasonably accommodate delays by the parties, to account for University closings, breaks or vacations, to account for complexities of a case (including the number of witnesses and volume of information provided by the parties), or to address other legitimate reasons. Reasonably diligent efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

The Title IX Coordinator or a designee will keep the parties apprised of the status of the Investigative process in writing, upon request by either party, or at thirty (30) day intervals after the issuance of the NOI.

#### **g. Standard of Review**

The Standard of Review is the preponderance of the evidence. A preponderance of the evidence means that it is more likely than not that the Prohibited Conduct occurred.

### **C. Draft Investigative Report**

At the conclusion of all the interviews with the Reporting Party, Responding Party, and any relevant witnesses, the Investigator will prepare a written Draft Investigative Report that summarizes the relevant information gathered, outlines the contested and uncontested information between the parties, includes an analysis, and states the investigative recommended finding(s). The investigative recommendation will indicate whether, based upon the preponderance of the evidence, the report supports a finding that:

- A Policy violation occurred; or
- A Policy violation did not occur.

### **D. Notice of Opportunity to Review the Draft Investigative Report**

The Investigator will send a Notice for Opportunity to Review the Draft Investigative Report, with the Draft Investigative Report and all documents relied upon, to both parties.

The Reporting Party and Responding Party may submit responses/comments and any additional information to the Investigator within seven (7) calendar days of the date the Notice of Opportunity to Review is sent. Either party may make a request to the Investigator for a limited extension of time to submit their response/comments or additional information. Requests for extension of time will be determined on a case- by-case basis, however, reasonable requests for extension of time will be granted.

The Draft Investigative Report review period is both parties' final opportunity to identify or submit any additional evidence, information, questions, or witnesses, before the report and investigative recommendation are finalized and issued. In the absence of demonstrable good cause, information discoverable through the exercise of due diligence that is not provided to the Investigator during the

Draft Investigative Report review period will not be considered by the Investigator, the Board of Review, the Board of Appeal, the Sole External Reviewer, or the Sole External Appeal Reviewer.

Based on the response(s)/comment(s) to the Draft Investigative Report and/or the submission of any additional information, the Investigator will determine whether any of the responses/comments and/or additional submissions constitute relevant, substantive new information or evidence, that would warrant further investigation. If the Investigator determines that no relevant, substantive new information or evidence was received and that further investigation is not warranted, the Investigator will then determine, what if any information or evidence obtained from either party in response to the Draft Report, will be incorporated in the Final Investigative Report. No further comments or revisions will be sought from the parties and the Investigation is deemed complete and the Investigative process is considered closed.

However, if the Investigator determines that the responses/comments and/or additional submissions constitute relevant, substantive new information or evidence and that further investigation is needed, the Investigator will continue the Investigation as needed. After further Investigation, the Investigator will issue an Updated Draft Investigative Report.

An Updated Draft Investigative Report will only be issued in these specific and limited circumstances. The Investigator will issue the Updated Draft Investigative Report and all documents relied upon to both parties. The parties will have five (5) calendar days to submit a response/comment to the Investigator. The Investigator will then determine, what if any information or evidence obtained from either party in response to the Updated Draft Report, will be incorporated in the Final Investigative Report. No further comments or revisions will be sought from the parties and the Investigation is deemed complete and the Investigative process is considered closed. Requests for extension of time will be determined on a case- by-case basis, however, reasonable requests for extension of time will be granted.

### **E. Final Investigative Report**

The Investigator will compile the Final Investigative Report, including all relevant information obtained in the course of the investigation, an analysis, the investigative recommended finding(s), a copy of the Draft Investigative Report, the Updated Draft Investigative Report if applicable, including the documents relied upon (Exhibits), and any responses/comments submitted by the parties, and issue to the parties.

## **XI. Consolidation**

At the sole discretion of the University, multiple reports and/or cross claims between the parties may be consolidated in one investigation and/or adjudication process, or processed separately and sequentially, if the information related to each report and/or cross claim would be relevant and probative in reaching a determination on the other report and/or cross claim (provided that the Consolidation does not unreasonably delay the prompt resolution of the matter). The decision to Consolidate reports and/or cross claims in one investigation and/or adjudication, or to process separately will be made in the sole discretion of the University after considering several factors, including but not limited to: 1. Whether the University has determined that the conduct in each report and/or cross claims constitutes relevant pattern evidence; 2. Whether the University has determined that the conduct in each report and/or cross claim is inextricably intertwined; or 3. Whether the University has determined that the conduct in each report and/or cross claim is sufficiently related;

and 4. Whether the University has determined that the conduct in each report and/or cross claim can reasonably be addressed in one investigation and/or adjudication.

## **XII. Board of Review or Sole External Reviewer**

The University will utilize a Board of Review or a Sole External Reviewer to adjudicate matters under the Procedures. The University retains the sole discretion in determining if a Board of Review or a Sole External Reviewer will be utilized.

### **A. Composition of the Board of Review**

The University has the discretion to select from a pool of trained University personnel to serve on the Board of Review during the adjudicative process. Prior to serving on the Board of Review, the University will ensure that the selected Board of Review member(s) have had the requisite annual training and relevant experience. If the University elects to utilize University personnel for the Board of Review, a Board of Review quorum will be comprised of a minimum of three (3) University personnel, selected from the pool of trained personnel. In the absence of a Board of Review quorum, the University may designate an alternative means of adjudication, to act in the place of the Board of Review.

A Board of Review member shall decline to participate in a particular case on the basis of an actual conflict of interest, bias, or lack of impartiality. A University student may not serve as a Board of Review member under the Procedures.

### **B. Sole External Reviewer**

The University has the discretion to select from a pool of trained external/third-party individuals to serve as the Sole External Reviewer during the adjudicative process. Prior to being selected, the University will ensure that the Sole External Reviewer has had the requisite annual training and relevant experience.

A Sole External Reviewer shall decline to participate in a particular case on the basis of an actual conflict of interest, bias, or lack of impartiality.

### **C. Notice to Parties Regarding Board of Review or Sole External Reviewer Meeting**

Prior to the scheduled meeting with the Board of Review or the Sole External Reviewer, the parties will be sent the Notice of Review identifying the Board of Review members or the Sole External Reviewer, date, time, and location of the meeting.

### **D. Role of the Board of Review and Sole External Reviewer**

The role of the Board of Review or Sole External Reviewer is to independently determine whether a Policy violation did or did not occur, based upon the preponderance of the evidence standard, and if warranted, determine the appropriate sanctions. The role of the Board of Review and the Sole External Reviewer, is not to re-investigate the matter. The Board of Review or Sole External Reviewer shall make the final determination(s) regarding credibility of all the information/evidence presented. However, no negative inferences related to final credibility determinations, shall be made, because a party does not appear or does not participate at the scheduled meeting.

Prior to the scheduled meeting, the University will provide the Board of Review member(s) or the Sole External Reviewer with access to the Final Investigative Report, including all relevant information obtained in the course of the investigation, an analysis, the investigative recommended finding(s), a

copy of the Draft Investigative Report, the Updated Draft Investigative Report if applicable, including the documents relied upon (Exhibits), and any responses/comments submitted by the parties.

## **E. Meeting Procedures**

### **1. Participation of the Parties**

The Reporting Party and Responding Party can elect to be present for the meeting with the Board of Review or the Sole External Reviewer. The Reporting Party and Responding Party may also decline to attend the meeting and no negative inference shall be drawn for any party that does not attend the meeting. Further, a parties' voluntary absence will not preclude the meeting from moving forward. The Board of Review or Sole External Reviewer will still hear from the party that attends the meeting and the Investigator. The Board of Review or Sole External Reviewer will make the final determination/decision based on the information/documents that have already been submitted in the Final Investigative Report, and on any information that may be provided by the Investigator and the party in attendance at the meeting.

No written or pre-recorded statements from the Investigator, the Reporting Party, Responding Party, or their respective attorneys, advisors, and/or support persons, will be accepted by the Board of Review or Sole External Reviewer at the meeting, or in lieu of the parties' presence at the meeting. However, if an Investigator, Reporting Party, and/or Responding Party wishes to participate, but they are not able to attend the meeting in-person, due to extenuating circumstances, the University will allow participation via a voice or video call. The University reserves the sole discretion to determine when a voice or video call is allowable, instead of the Investigator, Reporting Party and/or Responding Party being physically present at the meeting.

### **2. Investigator and/or Parties' Presentations**

The Board of Review or Sole External Reviewer will be responsible for ensuring that the set time limits for each part of the meeting process are followed. The Investigator will have no longer than fifteen (15) minutes to present the information and recommendation from the Final Investigative Report. The Investigator is limited to only providing information which has already been identified in the Final Investigative Report.

The Board of Review or Sole External Reviewer will then offer the Reporting Party an opportunity to give a closing and/or impact statement. The Reporting Party can decline to give a statement and no negative inference will be drawn. If the Reporting Party decides to give a statement, the statement shall be no longer than fifteen (15) minutes.

Thereafter, the Board of Review or Sole External Reviewer will offer the Responding Party an opportunity to give a closing and/or impact statement. The Responding Party can decline to give a statement and no negative inference will be drawn. If the Responding Party decides to give a statement, the statement shall be no longer than fifteen (15) minutes.

### **3. Closing Statements**

The Reporting Party and Responding Party will have an opportunity to present a closing/impact statement during the meeting. This is both parties' opportunity to remind the Board of Review member(s) or the Sole External Reviewer about the key evidence/information that is in the Final Investigative Report, which supports their position. The parties have wide latitude in how they can present their closing/impact statement by using hypothetical analogies, commenting on the credibility

of the other party or witnesses, discussing or challenging the plausibility of the events at issue, and advocating why the Board of Review member(s) or Sole External Reviewer should adopt an interpretation favorable to their position. Further, both parties can present information about how the events have impacted them.

While both parties will be allowed significant latitude, the statements should be confined to the issue that has been investigated and should not be used as an opportunity to engage in malicious personal attacks against the other party or witnesses. Evidence (witness testimony or documentary evidence), offered at the meeting that has not been previously presented during the investigation phase will not be considered by the Board of Review or the Sole External Reviewer.

#### **4. Meeting Questions**

After the Investigator's presentation, the Board of Review or Sole External Reviewer may, but is not required to, ask the Investigator questions. Only the Board of Review members or Sole External Reviewer can ask questions of the Investigator during the meeting. At the conclusion of the questions to the Investigator, the Board of Review or Sole External Reviewer will instruct the Investigator to remain for the duration of the meeting.

After the Reporting Party's presentation, the Board of Review or Sole External Reviewer may, but is not required to, ask the Reporting Party questions after the Reporting Party has given their statement. Only the Board of Review members or Sole External Reviewer can ask questions of the Reporting Party during the meeting.

After the Responding Party's presentation, the Board of Review or Sole External Reviewer may, but is not required to, ask the Responding Party questions after the Responding Party has given their statement. Only the Board of Review members or Sole External Reviewer can ask questions of the Responding Party during the meeting.

If deemed necessary, but not required, the Board of Review or Sole External Reviewer may ask the Investigator, Reporting Party, and/or Responding Party additional questions before concluding the meeting.

#### **5. Presentation of Recently Discovered Evidence at the Meeting**

The Board of Review and the Sole External Reviewer have the authority and discretion to determine the relevance of, place restrictions on, or exclude any information and/or evidence. In the event a party has recently discovered relevant evidence, information, and/or a witness, that was not discoverable through the exercise of due diligence during the Investigation and Draft Investigative Report review period, the Board of Review or Sole External Reviewer will allow the party presenting the recently discovered evidence an opportunity to explain: 1. the reason the evidence, information, and/or witness was not discoverable earlier and; 2. the relevancy of such evidence, information, and/or witness.

The Board of Review or Sole External Reviewer may ask the party questions in response to the reasons offered. Thereafter, the Board of Review or Sole External Reviewer will allow the other party an opportunity to provide a response, explaining their objection and/or opposition, if any. The Board of Review or Sole External Reviewer will then deliberate in private to determine whether that evidence, information, and/or witness should be presented to the Investigator for review and consideration and that the meeting should be postponed, or whether the meeting should continue.

## **6. Recording the Meeting**

A single recording of the meeting will be made and will be the property of the University. If the recording malfunctions, the Board of Review or the Sole External Reviewer shall create a sufficiently detailed summary of the meeting, to be maintained in the file. The file and the recording shall be maintained in the Office of Human Relations, and only made available to the Reporting Party and Responding Party, and their respective attorneys and advocates, and support persons (upon request and with any applicable signed releases), the Board of Review or the Sole External Reviewer, and if an appeal is filed, the Board of Appeal or the Sole External Appeal Reviewer.

### **F. Deliberations and Notice of Meeting Outcome**

At the conclusion of the presentations and all questions from the Board of Review or the Sole External Reviewer, the parties and their respective attorneys, advocates, and/or support persons, and the Investigator will be dismissed from the meeting, and deliberations will begin. The deliberations will not be recorded.

The Board of Review or Sole External Reviewer will make a Final Decision whether to:

1. Accept the Investigator's recommended finding(s);
2. Reject the Investigator's recommended finding(s); or
3. Refer the matter back for further/additional investigation; and
4. If a policy violation is found, determine sanctions and/or conditions.

When a Board of Review is utilized, a majority vote is required when deciding to accept or reject the Investigator's recommended finding(s) or to refer back for further/additional investigation.

If the Board of Review or Sole External Reviewer has accepted the Investigator's recommended finding(s) of a Policy violation, sanctions and/or conditions must also be determined. When a Board of Review is utilized, sanctions and/or conditions must be determined based upon a majority vote.

The Board of Review or Sole External Reviewer may consult with the Human Relations Office, Department of Human Resources, and/or any other University administrative offices about any prior disciplinary actions regarding the Responding Party and about sanctions imposed in similar cases in the past. Consistency in sanctions of similar cases is important, however, similar offenses may result in different sanctions where there are distinguishing facts and circumstances.

In determining sanctions and/or conditions, the Board of Review or Sole External Reviewer may consider these factors, including but not limited to:

- The nature and violence of the conduct at issue.
- The impact of the Prohibited Conduct on the Reporting Party.
- The impact or implications of the Prohibited Conduct on UMBC community members.
- Prior misconduct by the Responding Party, including the Responding Party's relevant prior discipline history, both at the University or elsewhere (if known), including criminal convictions.
- Maintenance of a safe and respectful environment.
- Any other mitigating, aggravating, or compelling circumstances to assist in reaching a just and appropriate resolution in each case.

Within ten (10) calendar days of the conclusion of the meeting, the University will issue a Notice of Meeting Outcome to the Reporting Party, Responding Party, and the Investigator. The Notice of Meeting Outcome will include the finding(s), rationale for the finding(s), and the sanctioning decision and/or the imposition of conditions, if warranted. The Notice of Meeting Outcome will also include information about the Appeal process, including the available grounds for Appeal, the timeframe for submitting an Appeal, and the name of the individual to whom the Appeal shall be addressed.

#### **G. Final University Action**

If neither party seeks an Appeal, at the conclusion of the Appeal period, the Notice of Meeting Outcome will become the Final Action of the University, and any sanction and/or condition determined by the Board of Review or Sole External Reviewer will take effect immediately. The parties will be given prompt written notice that the Notice of Meeting Outcome is now the Final Action of the University.

### **XIII. Board of Appeal or Sole External Appeal Reviewer**

The University will utilize a Board of Appeal or a Sole External Appeal Reviewer to adjudicate matters under the Procedures. The University maintains the sole discretion in determining if a Board of Appeal or a Sole External Appeal Reviewer will be utilized.

#### **A. Appeal Process**

Within ten (10) calendar days after receipt of the Notice of Meeting Outcome, both the Reporting Party and Responding Party may submit an Appeal, in writing, to the Human Relations Office/Title IX Coordinator. Either party may make a request to the Human Relations Office/Title IX Coordinator for a limited extension of time to submit their Appeal. Requests for extension of time will be determined on a case-by-case basis, however, reasonable requests for extension of time will be granted.

The grounds for Appeal are strictly limited to the following:

1. Substantive Due Process violation(s). Specified procedural errors or errors in interpretation of the Policy that were so substantial as to effectively deny the Reporting Party and/or Responding Party notice or a fair opportunity to be heard.
2. New and Significant Information/Evidence that has become available, which a reasonably diligent person could not have discovered during the Investigation and/or at the time of the meeting, that would change the Board of Review's or Sole External Reviewer's finding(s), decision(s), and/or sanctioning decision(s);
3. Excessiveness or insufficiency of the sanctioning decision.

Mere dissatisfaction or mere deviations from procedures that were not so substantial as to deny a party notice or a fair opportunity to be heard, are not valid bases for an Appeal.

If an Appeal is timely and properly filed, the non-Appealing party will be given the opportunity to review the Appealing party's written Appeal and respond to it in writing. Any response by the opposing (non-Appealing) party must be submitted to the Human Relations Office/Title IX Coordinator within ten (10) calendar days from being provided the Appealing party's written Appeal.

If both parties file cross-Appeals, the Appeal documents from each party will be considered together in one Appeal meeting. Each party will have the opportunity to respond to the Appeal of the other party pursuant to the process described hereinabove.

### **B. Composition of the Board of Appeal**

The University has the discretion to select from a pool of trained University personnel to serve on the Board of Appeal. Prior to serving on the Board of Appeal, the University will ensure that the selected Board of Appeal member(s) have had the requisite annual training and relevant experience.

If the University elects to utilize University personnel for the Board of Appeal, a Board of Appeal quorum will be comprised of a minimum of three (3) University personnel, selected from the pool of trained personnel. In the absence of a Board of Appeal quorum, the University may designate an alternative means of adjudication, such as designating an individual(s) to act in the place of the Board of Appeal. A University student may not serve as a Board of Appeal member under these Procedures.

A Board of Appeal member shall decline to participate in a particular case on the basis of an actual conflict of interest, bias, or lack of impartiality. A member that served on the Board of Review for a particular matter under the Procedures is precluded from sitting on the Board of Appeal for the same matter.

### **C. Sole External Appeal Reviewer**

The University has the discretion to select from a pool of trained external/third-party individuals to serve as the Sole External Appeal Reviewer. Prior to serving as the Sole External Appeal Reviewer, the University will ensure that the selected individual has had the requisite annual training and relevant experience.

A Sole External Appeal Reviewer shall decline to participate in a particular case on the basis of an actual conflict of interest, bias, or lack of impartiality. An individual that served as the Sole External Reviewer for a particular matter under the Procedures, is precluded from serving as the Sole External Appeal Reviewer for the same matter.

### **D. Notice to Parties Regarding Appeal Meeting**

Prior to the scheduled Appeal meeting, the University will send the parties the Notice of Appeal Meeting, identifying the Board of Appeal member(s) or Sole External Appeal Reviewer, date, time, and location of the Appeal meeting.

### **E. Role of the Board of Appeal or Sole External Appeal Reviewer**

The scope of the Board of Appeal or Sole External Appeal Reviewer will be strictly limited to the permissible grounds, outlined in **Section XIII A** above. The Board of Appeal and Sole External Appeal Reviewer's role is to independently review the matter, based upon the grounds for Appeal filed by the parties, and to confirm that the matter has been timely filed. However, the Appeal process is not intended to be a re-investigation of the matter.

### **F. Appeal Meeting Procedures**

The Board of Appeal will meet to review and discuss the Final Investigative Report (with the supporting documentation), the Board of Review recording, the Notice of Review Outcome, and any Appeals filed. This is an Appeal based on the record of the case. Neither the respective Parties, nor



the Investigator will be present for the Board of Appeal meeting. The Board of Appeal's deliberations will not be recorded.

If a Sole External Appeal Reviewer is selected, the individual will review the Final Investigative Report (with the supporting documentation), the Board of Review recording, the Notice of Review Outcome, and any Appeals filed. This is an Appeal based on the record of the case. Neither the respective Parties, nor the Investigator will be present with the Sole External Appeal Reviewer. There will be no recording made of the Sole External Appeal Reviewer's deliberative process.

### **G. Notice of Appeal Meeting Outcome**

The University will render a written decision on the Appeal(s) within ten (10) calendar days after the conclusion of the Appeal meeting. The written decision will include the Board of Appeal's or Sole External Appeal Reviewer's finding(s) and rationale and will be sent simultaneously to the Reporting Party, Responding Party, and Investigator.

Depending on the basis of the requested Appeal(s), the Board of Appeal or Sole External Appeal Reviewer may:

- Concur with the finding(s) and sanctioning decision of the Board of Review or the Sole External Reviewer;
- Concur with the findings of the Board of Review or Sole External Reviewer and amend/alter the sanctioning decision; or
- Only in cases of clear Policy error, vacate the finding(s) and sanction decision of the Board of Review or Sole External Reviewer and return the matter for additional investigation or request that a new Board of Review or Sole External Reviewer is selected to review the matter. For purposes of the Procedures, clear Policy error constitutes the misapplication of relevant Policy sections and/or improperly applying the Policy.

### **H. Final University Action After Appeal**

If an Appeal has been filed, the Notice of Appeal Outcome is the Final University Action under the Procedures.

## **XIV. Possible Sanctions and Conditions**

### **A. Sanctions**

The Policy prohibits a broad range of conduct, which is serious in nature. In keeping with the University's commitment to fostering an environment that is safe, inclusive, and free of Prohibited Conduct, the Policy allows for a wide latitude in the imposition of sanctions tailored to the facts and circumstances of each report, the impact of the Prohibited Conduct on the Reporting Party and surrounding UMBC community members, and ensuring accountability for the Responding Party. The imposition of sanctions is designed to eliminate Prohibited Conduct under the Policy, prevent its recurrence, and remedy its effects, while supporting the University's mission. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved and the entire UMBC community, or so deleterious to the educational or working environment, that it requires severe sanctions. The University reserves the right to delay or refuse the conferring of an academic degree—undergraduate or graduate—during the pendency of an investigation and/or adjudication process. Possible sanctions

may include, but are not limited to the following: a letter of reprimand, censure, service to the University, counseling, retraining, transfer, demotion, suspension (without pay), and/or termination.

### **1. TITLE IX REPRIMAND**

This sanction indicates that the Responding Party's "good standing" status is in jeopardy and further violations may result in Probation, Suspension, or Dismissal.

### **2. TITLE IX PROBATION**

This sanction places the Responding Party on Title IX probationary status during which further violations of the Policy may result in Suspension or Dismissal.

### **3. TITLE IX SUSPENSION**

Under the Procedures, the sanction Title IX suspension terminates a Responding Party's status as an employee for either a specific or indefinite period of time. The Title IX suspension may take effect immediately, on some future date to be specified, or be held in abeyance. A suspended Responding Party is restricted from campus and may not be present on campus without specific written authorization from the Department of Human Resources or designee or the Office of Human Relations. Any violation of this restriction shall subject the Responding Party to arrest for trespassing. A Responding Party who is suspended shall exit campus immediately upon receiving notice that the sanction of suspension has been imposed. University Police must accompany the Responding Party when retrieving personal belongings. This sanction is noted on the Responding Party's file as "Title IX - Suspension."

A Responding Party may file a written request with the Office of Human Relations to have this notation expunged after the period of suspension has ended. Otherwise, the notation will remain in the Responding Party's file unless the disciplinary file is expunged.

### **4. TITLE IX DISMISSAL**

Under the Procedures, the sanction of Title IX dismissal permanently terminates a Responding Party's status as an employee. A Title IX dismissed Responding Party is restricted from campus and may not be on campus without specific written authorization from the Department of Human Resources or designee or the Office of Human Relations. Any violation of this restriction shall subject the Responding Party to arrest for trespassing. A Responding Party who is dismissed shall exit campus immediately upon receiving notice that the sanction of Title IX dismissal has been imposed. University Police must accompany the Responding Party when retrieving personal belongings. This sanction is noted in the Responding Party's file as "Title IX - Dismissal" and will remain in the Responding Party's file unless the disciplinary file is expunged.

### **B. Conditions**

In certain circumstances, even when there are no sanctions imposed, the University reserves the right to impose certain conditions upon any party who is subject to the Policy. These conditions are designed to eliminate Prohibited Conduct under the Policy, prevent its recurrence, and remedy its

effects, while supporting the University's mission and federal obligations. These conditions are not to be construed as disciplinary or as sanctions.

The following conditions may be imposed, as appropriate. Conditions may include, but are not limited to:

1. Financial restitution for any loss sustained or incurred by the institution or member(s) of the University community.
2. Community restitution.
3. Participation in a restorative circle or conference.
4. Attendance at an alcohol and other drug assessment or education program.
5. Counseling Intake or Evaluation Session.
6. Educational project.
7. Suspension of computer account.
8. Restriction from specific University buildings, areas, or facilities.
9. Termination of Food Services contract.
10. Restriction or denial of campus driving privileges for disciplinary violations involving the use or registration of motor vehicles and/or parking permits.
11. No Contact Order with designated person(s).
12. Establishment of educational achievement expectations.
13. Academic registration block.
14. Revocation or denial of degree/diploma
15. Monetary fines.
16. Loss of University privileges, including social privileges, athletic privileges, housing privileges, co-curricular privileges, and/or facility-use privileges.
17. Random drug testing.

**C. Failure to Satisfy or Timely Complete a Disciplinary Sanction and/or Condition**

Failure to satisfy or complete a mandated sanction and/or condition within the allotted time may result in additional administrative actions, including, but not limited to, a monetary fine not to exceed \$100.

**D. Request to Expunge Disciplinary File/Record**

A finding of a violation of the Policy may be expunged from the Responding Party's disciplinary file/record, by the Office of Human Relations. A "Petition to Expunge" shall be submitted by the Responding Party to the Office of Human Relations for review. Factors to be considered shall include, but not be limited to, the following:

1. The present demeanor of the Responding Party;
2. The conduct of the Responding Party since the violation;
3. The nature and severity of the violation;
4. The impact upon the Reporting Party and the entire UMBC community; and
5. The fulfillment of other sanctions and/or conditions.

If expungement of the finding of a violation from the Responding Party's disciplinary file/record is granted, the disciplinary file/record will be rendered unreportable as it relates to the Responding Party's disciplinary file/record.

## **XV. Role of Support Person, Attorney, or Non-Attorney Advocate**

Staff Members have the right to assistance by a Support Person, an Advisor who may be a licensed attorney, an advocate supervised by an attorney, or a trained advocate throughout the process, including:

- Attendance at meetings and interviews with the party;
- Private consultations with the party during meetings and interviews, except during questioning of the party at the Board of Review or Sole External Reviewer meeting;
- Assistance with the party's exercise of any right during the process; and
- The presence of no more than two people, including a personal supporter of the party's choice, an attorney, or an advocate, at any hearing, meeting, or interview during the disciplinary proceedings.

The parties should provide advance notice to the University Official convening the meeting (including any investigative or adjudicative meeting) of the name and relationship of any individual who will accompany them, so that all parties are aware of who will be present at any meeting and the University can ensure that proper logistical arrangements can be made.

When scheduling any meeting under the Procedures, in which an individual has notified the University that a Support Person, Attorney or Non-Attorney Advisor/Advocate plans to participate, the University will make reasonable efforts to accommodate the Support Person, Attorney or Non-Attorney Advisor's/Advocate's schedule, while balancing the University's responsibility to provide a prompt and equitable process.

An individual's Support Person, Attorney or Non-Attorney Advisor/Advocate may not delay, disrupt, or otherwise interfere with the outlined Procedures. The Support Person, Attorney, or Non-Attorney Advisor will not be allowed to provide testimony or statements on behalf of the individual they are assisting.

**Support Person:** A Support Person is someone who can provide emotional, logistical, or other kinds of assistance. The Support Person is a non-participant who is present to assist a Reporting Party or Responding Party by taking notes, providing emotional support and reassurance, organizing documentation, or consulting directly with the party in a way that does not disrupt or delay the meeting. The Support Person cannot be a fact witness or provide any statements as part of any process under the Procedures. The Support Person shall not be an active participant in the process.

**Attorney or Non-Attorney Advisor/Advocate:** The Attorney or Non-Attorney Advisor/Advocate is a non-participant who is present to assist a Reporting Party or Responding Party by taking notes, providing emotional support, advice, and reassurance, organizing documentation, or consulting directly with the party in a way that does not disrupt or delay the meeting. The Attorney or Non-Attorney Advisor/Advocate cannot be a fact witness or provide any statements as part of any process under the Procedures. The Attorney or Non-Attorney Advisor/Advocate shall not be an active participant in the process.

## **XVI. External Reporting Agencies**

In addition to or as an alternative to the University's procedures for reporting Prohibited Conduct, reports of Prohibited Conduct, may be filed with the following agencies:

Office for Civil Rights  
U.S. Department of Education  
The Wanamaker Building  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323  
Phone: 215.656.8541  
Fax: 215.656.8605  
TDD: 1.800.877.8339  
Email: [OCR.Philadelphia@ed.gov](mailto:OCR.Philadelphia@ed.gov)  
Website: [http://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html)

Equal Employment Opportunity Commission (EEOC)  
City Crescent Building  
10 S. Howard Street, Third Floor  
Baltimore, Maryland 21201  
Phone: 1.800.669.4000  
Fax: 410.962.4270  
TTY: 1.800.669.6820  
Website: [www.eeoc.gov](http://www.eeoc.gov)

Maryland Commission on Civil Rights (MCCR)  
William Donald Schaefer Tower  
6 St. Paul Street, Ninth Floor  
Baltimore, Maryland 21202  
Phone: 410.767.8600  
Fax: 410.333.1841  
TTY: 410.333.1737  
Website: [www.mccr.maryland.gov](http://www.mccr.maryland.gov)

- Individuals who wish to file complaints with these external agencies should make contact as soon as possible, to verify any applicable filing time limits and deadlines.