

FROSTBURG STATE UNIVERSITY  
GENDER-BASED HARASSMENT AND VIOLENCE POLICY

Effective January 1, 2016

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## I. POLICY STATEMENT

Frostburg State University (the "University") values responsibility, respect, tolerance, and equity. To that end, the University is firmly committed to maintaining a learning and working environment free from Gender-Based Harassment, Sexual Misconduct, Relationship Violence, Stalking, Complicity, and Retaliation ("Prohibited Conduct"). Because Prohibited Conduct undermines the University's mission and jeopardizes the character and integrity of our community, Prohibited Conduct will not be tolerated and is expressly prohibited. This policy provides the expectations for maintaining a safe, inclusive, and nondiscriminatory environment and the process for reporting and resolving alleged violations of the policy. Students, faculty, and staff who violate this policy may face disciplinary action up to and including expulsion or termination from the University.

The University does not discriminate on the basis of sex or gender in employment or any of its education programs or activities. Sexual harassment, sexual assault, and other categories of sexual misconduct are forms of sex discrimination that are not only prohibited under this policy but also under federal and state discrimination laws. In accordance with Title IX of the Education Amendments of 1972 ("Title IX"), the federal law that prohibits discrimination on the basis of sex in federally funded educational programs and activities and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), this policy is designed to provide for the prompt, equitable, and impartial investigation and resolution of incidents of Gender-Based Harassment, Sexual Misconduct, Relationship Violence, and Stalking.

It is the responsibility of all members of the University community to create a safe and inclusive environment that is free from Prohibited Conduct. Individuals who report violations of this policy in good-faith will be protected from Retaliation.

This policy applies to all reports of Prohibited Conduct and supersedes and replaces the University's Sexual Harassment Policy, PN 1.004.

## II. DEFINITIONS

For the purposes of this policy, the following terms have the definitions provided below. Please note that some of these terms may also be used in other contexts, such as in connection with criminal or legal proceedings, and their meaning may be different in those contexts.

### ***Consent***

Clear, voluntary and unambiguous agreement, expressed in mutually understandable words or actions, to engage in a specific sexual activity.

Consent must be obtained. It is the responsibility of the person who wants to engage in the sexual activity to ensure that they have consent from the other party, and that the other party is capable of consent. Accordingly, when there is a dispute as to whether sexual activity was consensual, the University's investigation will assess whether the person initiating the sexual activity knew, or should have known, that the sexual activity was not consensual or that the other party was incapable of providing consent.

Consent must be affirmative. Consent requires an affirmative demonstration, through words or actions that conveys a clear willingness to engage in the sexual activity. As a result:

- An individual cannot infer consent through silence, lack of resistance, or absence of a verbal "no" or "stop."  
***Relying solely on non-verbal communication may result in a violation of this policy.***
- Consent cannot be inferred by the existence of a current or prior dating or sexual relationship between individuals.

- Consent to any one form of sexual activity does not automatically imply consent to other forms of sexual activity.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.

Consent must be ongoing. Consent must be present throughout the sexual activity and may be withdrawn at any time. However, withdrawal of consent requires an outward demonstration, through understandable words or actions, which clearly conveys that a party is no longer willing to engage in the sexual activity. If there is any confusion as to whether there is consent or whether prior consent has been withdrawn, the parties should stop the activity until the confusion is resolved.

Consent must be voluntary. Consent can never be obtained by use of physical force, threats, intimidating behavior or coercion. Furthermore, consent cannot be obtained by taking advantage of an individual's inability to give consent because of incapacitation.

### ***Coercion***

Words and/or conduct that substantially impairs an individual's ability to voluntarily choose whether to engage in a sexual activity. It exists when a person applies an unreasonable amount of pressure on another for sex. For example, when a person makes clear that they do not want sex, want to stop, or that going past a certain point of sexual interaction is unwanted, continued pressure can be coercive. Coercion is evaluated based on the intensity, frequency, and duration of the words or actions.

### ***Complainant***

Individual who experienced the reported Prohibited Conduct, regardless of whether that individual made the report, participated in the University's review and investigation, or filed a formal complaint alleging violations of this policy. If an individual who experienced Prohibited Conduct chooses not to file a formal complaint, the University may at its discretion initiate an investigation and serve as the Complainant in any proceeding under this policy and accompanying Procedures.

### ***Confidential Employees***

Employees who are not required to report incidents of Prohibited Conduct to the University. The only confidential employees at the University are the Brady Health Center and Counseling and Psychological Services (CAPS) employees.

### ***Employee***

Faculty or staff employee, regardless of type (*i.e.*, regular or contingent)

### ***Force***

Physical violence and/or imposing on someone physically to gain sexual access. Force can include threats, intimidation, and coercion that are used to overcome resistance.

### ***Incapacitation or Incapacitated***

A state where an individual cannot make an informed and rational decision to engage in sexual activity because the individual lacks the mental and/or physical ability to understand the nature of the sexual activity (*i.e.*, the who, what, where, why, or how of the sexual activity). There are a number of causes for incapacitation, including, but not limited to:

- Being asleep or unconscious
- Intermittent consciousness
- Existence of a mental or developmental disability
- Consumption of alcohol or other drugs

Alcohol or drug use is one of the primary causes of incapacitation, but consumption alone is insufficient to establish incapacitation. Incapacitation is a state beyond intoxication, impairment of judgment, or “drunkenness.” The impact of alcohol and drugs vary from person to person, and evaluating whether an individual is incapacitated and unable to give consent, requires an assessment whether the consumption of alcohol or other drugs has rendered the individual physically helpless and substantially incapable of:

- Making decisions about the potential consequences of the sexual activity;
- Appraising the nature of one’s own conduct;
- Communicating consent to the sexual activity; or
- Communicating unwillingness to engage in the sexual activity.

An individual who is incapacitated is unable to consent to sexual activity. Under this policy, in evaluating incapacitation, the University will assess whether the Respondent knew or should have known, the Complainant was incapacitated.

### ***Interim Measures***

Temporary actions taken by the University to protect the safety and wellbeing of the parties and to foster a more stable and safe environment during the University’s investigation and resolution process. Interim Measures are initiated based on information gathered when an incident of Prohibited Conduct is reported to the University. Interim Measures are not intended to be permanent and thus may be amended or withdrawn as additional information is gathered.

### ***No Contact Order***

An official University directive that serves as notice to an individual that they are prohibited from verbal, electronic, written, or third party communications with another individual. The University may issue a No Contact Order as a remedial and protective measure, including as an Interim Measure, in order to enhance the safety of all parties, the broader University community, and/or to protect the integrity of the University’s investigation and resolution process.

### ***Respondent***

An individual accused of engaging in conduct that violates this policy.

### ***Responsible Employee***

An employee who has the authority to address Prohibited Conduct, who has a duty to report incidents of Prohibited Conduct, or who a member of the University community could reasonably believe has such authority or duty. Except for the Confidential Employees identified above, all University employees have been designated as Responsible Employees by the University.

Responsible Employees who learn of or witness Prohibited Conduct involving a student or third-party are required to report such Prohibited Conduct to the Office of Gender Equity. Responsible Employees who are officers, department chairs, deans, directors, managers, or supervisors are also required to report Prohibited Conduct that they learn of or witness involving a University employee to the Office of Gender Equity.

### ***Sexual Misconduct***

A broad term that encompasses Sexual Harassment, Sexual Violence, Sexual Exploitation, and Sexual Intimidation. Sexual Misconduct can occur between people of the same sex or between people of different sexes. It can also include both intentional conduct and conduct that results in negative effects, even if those negative effects were unintended.

### **III. SCOPE AND APPLICABILITY**

#### **A. Individuals covered and protected by this policy**

This policy and associated procedures apply to the conduct of, and protect, all University students, faculty, and staff—regardless of gender, sexual orientation, or gender identity. This policy also applies to contractors and other third parties within the University’s control.

#### **B. Jurisdiction**

This policy applies to Prohibited Conduct that occurs:

1. *On campus*, which includes any University facility or University property;
2. *Off campus*, if the conduct:
  - (a) occurred in connection with a University sponsored, recognized, or approved program (e.g., University-sponsored study abroad or internship program),
  - (b) impedes equal access to any University education program or activity or has the effect of creating a hostile education or employment environment for a member of the University community, or
  - (c) otherwise threatens the health and/or safety of a member of the University community.

In determining whether the University has jurisdiction over off-campus conduct that is not part of a University sponsored, recognized, or approved program, the University will consider the following factors:

- the seriousness of the alleged conduct,
- the risk of harm involved,
- whether both parties are members of the University community, and
- whether the off-campus conduct is part of a series of actions that occurred both on and off campus.

#### **C. Reports involving minors or suspected child abuse and neglect**

All members of the University community are required to comply with applicable laws and regulations regarding the reporting of child abuse and neglect. Under Maryland law<sup>1</sup>, University employees who learn or have reason to believe that a child under the age of 18 has been subjected to abuse or neglect, including sexual abuse, must report this abuse or neglect to law enforcement or the appropriate child protective services agency. This reporting obligation includes past incidents of abuse or neglect – meaning individuals must report suspected child abuse or neglect even if the abuse occurred in the past and the victim is now an adult. In order to ensure compliance with the law, employees must notify University Police within 48 hours of the event that caused them to believe that a child has been subjected to abuse or neglect. University Police will take immediate steps to assist with the protection of the child and comply with all applicable legal reporting requirements.

### **IV. TITLE IX COORDINATOR AND TITLE IX TEAM**

The Title IX Coordinator is responsible for the administration of this policy and oversees the University’s response to, and investigation and resolution of, all reports of Prohibited Conduct. The Title IX Coordinator leads the University’s Office of Gender

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<sup>1</sup> Md. Code Ann. Fam. Law §§5-701, 5-704, 5-705. More information on mandatory reporting of child abuse and neglect can be found at [http://www.dhr.state.md.us/blog/?page\\_id=3992](http://www.dhr.state.md.us/blog/?page_id=3992).

Equity, which is also staffed by a Deputy Title IX Coordinator. The Deputy Title IX Coordinator is responsible for investigating complaints of Prohibited Conduct and assists the Title IX Coordinator with case management, training, and prevention.

Members of the community who would like guidance on this policy and its accompanying procedures may contact the Office of Gender Equity. Office of Gender Equity is located in the Hitchins Administration Building, Room 126. Individuals may call the office at 301.687.4733 or send an email to [titleix@frostburg.edu](mailto:titleix@frostburg.edu).

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The Title IX Coordinator is also responsible for leading the University's Title IX Team. Members of the Title IX Team include the Title IX Coordinator, Deputy Title IX Coordinator, and Chief of University Police. On some occasions, based on the nature of the Prohibited Conduct, members of the Title IX Team may also include Title IX investigators, University Counsel, and/or members from Student Affairs, the Provost's Office, and Human Resources.

Individuals are encouraged to contact the Title IX Coordinator with any concerns about this policy or the University's application of Title IX. Complainants also have the right to seek redress from state and federal governmental agencies, including the Department of Education's Office of Civil Rights at 215.656.8541 or [ocr.philadelphia@ed.gov](mailto:ocr.philadelphia@ed.gov); U.S. Equal Employment Opportunity Commission at 1.800.669.4000; and with the Maryland Commission on Civil Rights at 410.767.8600.

## **V. PROHIBITED CONDUCT**

The University prohibits the following conduct:

### **A. Sexual Harassment**

Sexual Harassment is a form of unlawful sex discrimination and means any unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome verbal, physical, or electronic conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, evaluation of academic work, or participation in a University-sponsored educational program or activity;
2. Submission to or rejection of such conduct by an individual is used as a basis for an academic, employment, or activity or program participation decision affecting that individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance, (*i.e.*, it is sufficiently severe, persistent, or pervasive to create an intimidating, hostile, humiliating, demeaning or sexually offensive working or learning environment).

A person's subjective belief alone that the behavior is offensive does not necessarily make that behavior sexual harassment. The behavior must be objectively reasonable meaning that a reasonable person in similar circumstances and with similar identities would find the behavior hostile, intimidating, or abusive.

A single isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical.

Sexual harassment:

- May be blatant and involve an overt action, threat, or reprisal; or may be subtle and indirect, with a coercive aspect that is unstated but implied.
- May or may not include an intent to harm.
- May not always be directed at a specific individual.
- May be committed by anyone, regardless of gender, age, position, or authority. While there may be a power differential between the parties, often due to differences in age, educational, employment, or social status, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the Complainant has a current or previous relationship, including a romantic or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur in the classroom, in the workplace, in residential settings, or in any other setting.
- May occur by or against an individual of any sex, gender identity, gender expression, or sexual orientation.
- May be committed in the presence of others or when the parties are alone.
- May occur through electronic communications, including email, text message, and social media.

The following list contains examples of behavior of a sexual nature that if unwelcome, may constitute sexual harassment.

**Physical Conduct:** touching, hugging, kissing, fondling, or touching oneself sexually for others to view.

**Verbal Conduct:** sexual or “dirty jokes,” comments on physical attributes or an individual’s body, spreading sexual rumors, bragging about one’s sexual activity in front of others, using sexually degrading words or sounds to a person or to describe a person, sexually explicit statements or stories that are not legitimately related to employment duties, course content, research, or other University program or activity.

**Visual Conduct:** leering, displaying or distributing sexually explicit drawings, pictures, and/or written material.

**Written Conduct:** letters, emails, instant messaging, text messaging, blogs, web pages, and social media containing comments, words, or images of conduct described above.

**Quid pro quo:** making an academic or employment decision dependent on whether an individual submits to sexual advances, threatening reprisals after an individual has turned down sexual advances, offering academic or employment benefits in exchange for sexual favors.

## **B. Gender-Based Harassment**

Unwelcome verbal, physical, or electronic conduct of a nonsexual nature based on sex, sex-stereotyping, sexual orientation, or gender identity that has the purpose or effect of unreasonably interfering with an individual’s academic or work performance (*i.e.*, it is sufficiently severe, persistent, or pervasive to create an intimidating, hostile, humiliating, demeaning, or offensive

working or learning environment). For example, harassment for exhibiting what is perceived as a stereotypical characteristic for one's sex or for failing to conform to stereotypical notions of masculinity or femininity, regardless of the actual or perceived sex, gender, sexual orientation, gender identity, or gender expression may violate this policy.

### **C. Sexual Violence<sup>2</sup>**

Physical sexual acts perpetrated without consent. Sexual Violence includes rape, sexual assault, sexual battery, and sexual coercion.

**1. Sexual Assault I – Nonconsensual sexual intercourse** involves any act of sexual intercourse with another individual without consent. Sexual intercourse includes vaginal or anal penetration, however slight, with any body part or object, or oral penetration involving mouth to genital contact.

**2. Sexual Assault II – Nonconsensual sexual contact** involves any intentional touching of the intimate parts of another person, causing another to touch one's intimate parts, or disrobing or exposure of another without consent. Intimate parts may include genitalia, groin, breast, or buttocks, or the clothing covering them, or any other body part that is touched in a sexual manner. Sexual contact also includes attempted sexual intercourse.

### **D. Sexual Exploitation**

Non-consensual or abusive sexual advantage of another person for one's own advantage or benefit or for anyone other than the person being exploited, or taking advantage of another person's sexuality.

Examples of sexual exploitation include, but are not limited to:

- observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- non-consensual sharing or streaming of images, photography, video, audio recordings of nudity or sexual activity, or distribution of such without the knowledge and consent of all parties involved;
- knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge;
- knowingly failing to use contraception without the other party's knowledge;
- inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity; and
- threatening to disclose an individual's sexual orientation, gender identity, or gender expression.

### **E. Sexual Intimidation**

Threatening behavior of a sexual nature directed at another person. Sexual intimidation includes:

- threatening to sexually assault another person;
- engaging in indecent exposure; and
- gender-based stalking, including cyber-stalking

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<sup>2</sup> In addition to violating this policy, certain acts of sexual violence are crimes in the state of Maryland. Under Maryland Criminal Procedure Article [§ 11-922](#), "sexual assault" means rape or a sexual offense in any degree that is specified in [§§ 3-303 through 3-324](#) of the Criminal Law Article of the Annotated Code of Maryland.

## **F. Relationship Violence**

Relationship violence is a broad term that encompasses Domestic Violence and Dating Violence.

### **1. Domestic Violence<sup>3</sup>**

Domestic violence refers to sexual or physical abuse committed by any of the following individuals:

- a current or former spouse or intimate partner of the Complainant;
- a person with whom the Complainant shares a child in common;
- a person who is cohabitating with or who has cohabitated with the Complainant as a spouse or intimate partner;
- a person similarly situated to a spouse of the Complainant; or
- any other person against an adult or youth complainant protected from those acts by Maryland's domestic and family laws. For the purposes of this policy, individuals are not covered within the scope of this definition solely by virtue of their status as a roommate or former roommate in University housing or as a co-tenant or former co-tenant in off-campus housing shared with other students.

### **2. Dating Violence**

Physical or sexual abuse committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. Whether the relationship is of a romantic or intimate nature is determined by a variety of factors, which include:

- the length of the relationship;
- the type of relationship; and
- the frequency of interaction between the persons involved in the relationship.

## **G. Stalking<sup>4</sup>**

A course of physical or verbal conduct directed at another individual that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

- A "course of conduct" consists of at least two acts.
- "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical treatment or professional counseling.
- A "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.
- Stalking includes cyber-stalking (*i.e.*, using electronic means such as the Internet, social media, blogs, cell phones, texts, etc., to pursue, harass, or make unwelcome contact with another person in an unsolicited fashion).

## **H. Complicity**

Any act that knowingly aids, facilitates, promotes, or encourages the commission of Prohibited Conduct by another person.

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<sup>3</sup> Under Maryland law, [domestic abuse](#) includes: assault; an act that places a person in fear of imminent serious bodily harm or an act that causes a person seriously bodily harm; attempted or actual rape or sexual offense; stalking; and false imprisonment. Under §§ 4-504 through 4-511 of the Family Law Article of the Annotated Code of Maryland, Complainants may seek relief from the court by filing a petition for a peace or protective against the Respondent. Maryland laws provides [criminal penalties](#) for violations of certain orders of protection.

<sup>4</sup> In addition to violating this policy, stalking is a crime in Maryland under [§ 3-802](#) of the Criminal Law Article of the Annotated Code of Maryland.

## I. Retaliation

Acts or words against an individual because of the person's participation in a complaint, investigation, and/or resolution of an allegation of Prohibited Conduct.

- Retaliation can be committed by one individual or a group of individuals, not just by a Respondent or Complainant.
- Retaliation may include intimidation, threats, coercion, harassment, and adverse employment or educational actions.

Retaliation is strictly prohibited under Title IX and this policy. Accordingly, any individual who is found to have engaged in retaliation is subject to discipline, which can include expulsion or termination of employment. A report of retaliation will be viewed as a separate offense under this policy, which means that an individual may be found responsible for retaliation even if no one is found responsible in the underlying report of Prohibited Conduct. Individuals who believe they are being subjected to retaliation should promptly contact the Office of Gender Equity.

## VI. REPORTING OPTIONS

It is important for individuals who experience Prohibited Conduct to be aware of the reporting options available to them in order to make informed choices when disclosing their experience. The information below discusses the various options available for reporting an incident of Prohibited Conduct.

### A. Reports to Law Enforcement

Individuals who experience Prohibited Conduct are strongly encouraged to report the incident to law enforcement. Reporting an incident of Prohibited Conduct to law enforcement does not preclude an individual from also reporting the incident to the University. Reports made to the University and law enforcement may be pursued simultaneously; and the outcome of one investigation does not determine the outcome of the other.

University Police can assist individuals in reporting an incident of Prohibited Conduct to the appropriate law enforcement agency. Individuals who report incidents of Prohibited Conduct to University Police should understand that University Police are Responsible Employees under this policy and will forward the report to the Office of Gender Equity, regardless of whether the incident constitutes a crime under the law.

Law Enforcement Contact Information	
<b>UNIVERSITY POLICE</b> The University Police station is open 24-hours a day and is located across from Dunkle Hall. Emergency: 911 or 301.687.4222 Non-emergency: 301.687.4223 Email: <a href="mailto:police@frostburg.edu">police@frostburg.edu</a>	<b>FROSTBURG CITY POLICE</b> 37 Broadway Frostburg, Maryland 21532 Emergency: 911 Non-emergency 301.689.3000

Most criminal investigations into Prohibited Conduct will be handled by the C3I criminal investigation unit. The C3I unit investigates all major crimes that occur in Allegany County as well as multi-jurisdictional investigations. The unit is comprised of experienced investigators from Frostburg State University, Cumberland Police department, Maryland State Police, Allegany County Sheriff's Office, Frostburg City Police, the State's Attorney's Office, and Federal Bureau of Investigation.

## **B. Reports to the University**

The University can only take corrective action and provide support when it becomes aware of a problem. Accordingly, individuals who believe they have experienced conduct that violates this policy are encouraged to promptly report the incident to the University by:

- Contacting the [Office of Gender Equity](#) by telephone, email, mail, or in person during regular office hours:  
126 Hitchins Administration Building • [titleix@frostburg.edu](mailto:titleix@frostburg.edu) • 301.687.4733
- Completing the online [Prohibited Conduct Reporting Form](#); or
- Contacting University Police or other Responsible Employee

Deciding whether to make a report and choosing how to proceed are personal decisions. When reporting an incident of Prohibited Conduct to the University, a Complainant does not need to decide whether to request any particular course of action. Choosing to report an incident and deciding how to proceed after making the report is a process that unfolds over time. The University makes every effort to respect an individual's autonomy in how to proceed with a report of Prohibited Conduct. Resources are available to support an individual who experiences Prohibited Conduct regardless of the course of action ultimately chosen.

### **1. Time period for reporting**

The University does not impose a time limit for reporting incidents of Prohibited Conduct. However, individuals are strongly encouraged to report the incident as soon as possible after the incident occurred in order to maximize the University's ability to respond promptly and effectively. Delays may make it more difficult to gather relevant and reliable information and impair the University's ability to respond and take appropriate action.

### **2. Anonymous Reporting**

Individuals have the option of anonymously reporting an incident of Prohibited Conduct to the University. With anonymous reporting, individuals have the option of not providing their name, the identity of the perpetrator, and/or the specific details of the incident. The Title IX Coordinator receives all anonymous reports and may consult with the Title IX team on the most appropriate means to respond, which may include implementing community remedies such as targeted training or increased monitoring or surveillance.

The University created a system for anonymous reporting as a means to encourage reporting by those who otherwise would not come forward to report Prohibited Conduct. While the University will work hard to respond and remedy the conduct alleged in an anonymous report, please understand that the University's response may be limited.

There are two ways to anonymously report an incident of Prohibited Conduct:

**By Phone:** Gender-Based Harassment and Violence Tip Line • 301.687.3434

Upon calling the tip line, the caller will hear a recorded message directing them to leave a message containing the information they wish to share. The message is then forwarded to the Office of Gender Equity. Messages left on the tip line are completely anonymous without phone numbers or names connected to them.

**Online:** [Prohibited Conduct Reporting Form](#)

The online report form gives a reporting party the option of remaining anonymous. Individuals who wish to remain anonymous should check the Anonymous Report box on the form and not include their contact information.

*Responsible Employees may not use Anonymous Reporting to report Prohibited Conduct they learn of, witness, or is disclosed to them by students or third-parties.*

### **3. Responsible Employees**

All University employees other than those listed as Confidential Employees are considered Responsible Employees. Responsible Employees will safeguard an individual's privacy, but are **required** to immediately share all known details about alleged violations of this policy. Responsible Employees are obligated to bring reports of Prohibited Conduct to the attention of the Title IX Coordinator in order to provide timely support for all parties and to allow for an effective institutional response. *No employee is authorized to investigate or resolve incidents of Prohibited Conduct without the involvement of the Title IX Coordinator.*

Responsible Employees may contact the Office of Gender Equity directly at 301.687.4733 or [titleix@frostburg.edu](mailto:titleix@frostburg.edu) or submit an online [Prohibited Conduct Reporting Form](#). The Title IX Coordinator makes every effort to work collaboratively with the Responsible Employee in order to operate with discretion and maintain privacy of the individuals involved.

### **4. Students**

All students who are not otherwise required to report as a Responsible Employee are **strongly encouraged** to report any Prohibited Conduct perpetrated by a member of the University community or occurring at a University program or activity.

### **5. Public Awareness Events and Programs**

Public awareness events and programs (e.g., Take Back the Night) at which students or employees disclose experiences of Prohibited Conduct are **not considered notice** to the University for the purpose of this policy unless the individual disclosing his or her experience also initiates a complaint under this policy. *Disclosures of incidents of Prohibited Conduct made to faculty or as part of classroom discussion or coursework are considered "reports" to the University and will be forwarded to the Office of Gender Equity.*

### **6. IRB-Approved Research**

Disclosures of incidents of Prohibited Conduct that are made as part of an Institutional Review Board-approved human subjects research study, including the University's campus climate study, are **not considered notice** to the University for the purpose of this policy unless the individual disclosing his or her experience also initiates a complaint under this policy.

## **VII. OBTAINING HELP AND SUPPORT**

Members of the University community who experience Prohibited Conduct are urged to immediately seek help. In addition to filing a report with law enforcement and the University, help also includes seeking medical treatment and obtaining confidential counseling or crisis response. It is important for individuals who experience Prohibited Conduct attend to any physical injuries as well as their emotional well-being.

### **A. Finding a Safe Place**

Prohibited Conduct, especially acts of relationship and sexual violence, can be traumatic and shatter a person's sense of security. In the immediate aftermath of an incident, it is important to seek a safe place. Individuals who are in immediate danger or seriously injured should dial 911.

## **B. Seeking Medical Attention and Preserving Evidence**

If it is safe to do so, individuals are encouraged to take precautions in order to preserve any evidence that may help with a criminal prosecution or University investigation. Regardless of whether a person intends to file criminal charges, they are encouraged to obtain a forensic medical exam in order to preserve evidence that may be on their body and clothes. A forensic examination will allow a trained healthcare professional to assess the individual's medical needs and collect evidence that can later be used if the person decides to pursue a criminal complaint. [Western Maryland Regional Medical Center](#), located at 12500 Willowbrook Road, Cumberland, Maryland 21502, has specially-trained nurses who can perform a forensic exam and provide medical care to individuals who have experienced sexual violence.

If possible, individuals should refrain from showering or bathing, brushing their teeth, washing their hands, and urinating or defecating. The best way to preserve evidence is to go to the hospital in the clothing worn at the time of the assault. Individuals who end up changing their clothes should take the clothes worn during the assault with them to the hospital. Try to use a paper bag to store any clothing rather than a plastic bag, which can degrade or contaminate forensic evidence. In addition to the physical evidence on the body and clothes, evidence may also include texts, emails, voicemail messages, social network postings, photographs, and written documents such as cards, notes, and letters. Individuals should preserve this evidence as well in order to assist investigators if a person decides to file a complaint with law enforcement and/or the University.

Individuals who experience sexual violence are encouraged to be examined by a healthcare professional even if they have no visible injuries and do not want a forensic exam. Individuals may go to [Western Maryland Regional Medical Center](#) and have a medical exam performed without having any forensic evidence collected. In addition, students can go to [Brady Health Center](#), located on campus, where medical staff can perform a physical exam and screen and provide treatment for STIs and pregnancy.

## **C. Obtaining Support**

It is important to find people who can provide support after experiencing a form of Prohibited Conduct. Individuals may use any of the resources listed below to access confidential assistance or to explore reporting options without initiating further action from the University. This means that Confidential Employees and the other resources listed below **will not share** information about an individual (including whether that individual has received services) without the individual's consent, unless there is an imminent threat of harm to self or others.

Individuals who choose to discuss incidents of Prohibited Conduct with Confidential Employees or utilize only Confidential Resources should understand that the University will not be able to conduct an investigation into the particular incident, or pursue disciplinary action against the alleged perpetrator, unless the incident is reported to the Office of Gender Equity directly by the victim, law enforcement, or someone who does not have the obligation to keep it confidential. Individuals who initially choose only to disclose Prohibited Conduct to Confidential Employees or Confidential Resources may report the incident to the Office of Gender Equity or law enforcement at a later time to initiate an investigation.

### **1. On-Campus Resources**

#### **[Counseling and Psychological Services \(CAPS\)](#)**

Sand Spring Hall • 101 Braddock Road • Frostburg, Maryland 21532  
301.687.4234 • [caps@frostburg.edu](mailto:caps@frostburg.edu)

CAPS is staffed by trained counselors who can provide confidential support and assistance to current students. CAPS offers individual and group counseling for those who experience sexual misconduct, relationship violence, and stalking

as well as to students who may need support in assisting a friend who is a survivor. There is no cost for counseling services. Counselors are available from 8:00 am to 4:30 pm Monday through Friday.

### **Brady Health Center**

101 Braddock Road • Frostburg, Maryland 21532

301.687.4310 • [bradyhealth@frostburg.edu](mailto:bradyhealth@frostburg.edu)

Brady Health Center is staffed by confidential licensed healthcare providers. The health center offers complete physical exams, screening and treatment for sexually transmitted infections (STIs), emergency contraception, and pregnancy tests. The closest hospital that can conduct a forensic medical examination is Western Maryland Regional Medical Center in Cumberland. Students who have been sexually assaulted may go to Brady Health Center to learn more about their options regarding a forensic exam and a Brady Health staff member can contact the hospital in order to have a forensic nurse ready for the student's arrival. The University can also arrange transportation to the hospital for any student wanting a forensic medical examination performed.

### **Chaplain Cindy Zirlott – United Campus Ministry**

301.687.7490 • [c.zirlott@frostburg.edu](mailto:c.zirlott@frostburg.edu)

Chaplain Cindy Zirlott is available for students, faculty, and staff to discuss religious, spiritual, and personal issues.

## **2. Off-Campus Resources**

### **Family Crisis Resource Center (FCRC)** • 301.759.9244 (24-hour helpline)

FCRC offers a 24-hour helpline and emergency shelter for survivors of relationship and sexual violence. FCRC also has trained counselors and advocates to assist individuals who may have experienced sexual misconduct, relationship violence, and stalking. They offer advocacy and accompaniment, individual and group counseling, and crisis intervention services.

In addition to their office and emergency shelter in Cumberland, FCRC has a satellite office in Frostburg, located at 62 Frost Village Road. Individuals wishing to speak to a confidential FCRC advocate or counselor can call the 24-hour helpline to make an appointment for either the Cumberland or Frostburg location.

### **Western Maryland Regional Medical Center**

12500 Willowbrook Road • Cumberland, Maryland 21502 • 240.964.7000

Western Maryland Regional Medical Center is the designated hospital in Allegany County with a certified forensic nurse examiner who can perform a forensic medical exam for sexual assault survivors. There is no charge for a forensic medical examination and survivors have the option of reporting the assault to the police or can remain anonymous and have the evidence held for a time with no personal identifying information.

### **Allegany Law Foundation, Inc.**

110 Greene Street • Cumberland, Maryland 21502 • 301.722.3390

The Allegany Law Foundation is a legal services program assisting low-income clients in civil cases in Allegany County. Assistance includes referrals to pro bono attorneys and representation by contract attorneys providing reduced fee assistance through legal clinics and court representation. Eligible clients are provided assistance with their cases at no costs. Individuals interested in legal services can call Allegany Law during their client intake hours, Monday through Thursday 9:00 am to noon.

**Office of the Allegany County Public Defender**

248 North Mechanic Street • Cumberland, Maryland 21502 • 301.777.2142

The Office of the Public Defender provides low-cost representation for individuals in criminal cases.

**Office of the Allegany County State's Attorney**

59 Prospect Square, Suite 111 • Cumberland, Maryland 21501 • 301.777.5962

The Office of the State's Attorney prosecutes crimes occurring in Allegany County and provides victim/witness assistance.

**3. Other Community Resources****Maryland Coalition Against Sexual Assault (MCASA)**

MCASA has valuable information and resources on its website for sexual assault survivors, including the locations of rape crisis and recovery centers located across the state of Maryland so survivors can find help when they are home and away from the campus.

**Sexual Assault Legal Institute (SALI)**

SALI provides legal services to sexual assault survivors in the state of Maryland.

**Maryland Criminal Injuries Compensation Board**

Provides aid and assistance to victims of crime such as reimbursement for medical and dental expenses, counseling expenses, loss earnings, disability, and crime scene clean up.

**The Pro Bono Counseling Project (PBCP)** • 1.877.323.5800

PBCP links Maryland individuals and families with limited resources with licensed mental health professionals who can provide counseling and therapy at no cost.

**National Sexual Assault Hotline** 1.800.656.HOPE (4673) • <https://ohl.rainn.org/online>

The National Sexual Assault Hotline was created by the [Rape, Abuse & Incent National Network \(RAINN\)](#). It provides 24-hour confidential support and referral information for survivors. Individuals can also use online instant messaging to connect with a confidential support specialist.

**National Domestic Violence Hotline** • 1.800.799.SAFE (7223)

The National Domestic Violence Hotline operates 24-hour confidential and free support for survivors. Individuals who have experienced abuse, have abused, or are trying to help a friend in an abusive relationship can speak with an advocate via telephone or instant message.

**Tahirih Justice Center** • 571.282.6161

The Tahirih Justice Center works to protect immigrant women and girls seeking justice in the United States from gender-based violence. Tahirih provides holistic legal services, case management, advocacy, and education. It can assist domestic violence and sexual assault survivors with adjustment to their immigration status and with family law matters.

## **VIII. PRIVACY AND CONFIDENTIALITY**

The University is committed to protecting the privacy of all individuals involved in an incident reported under this policy. Every effort will be made to respect and safeguard the privacy interests of the individuals involved in a manner consistent with the need for a careful assessment of the allegation and any necessary steps to eliminate the misconduct, prevent its recurrence, and address its effects.

### **A. Distinction between privacy and confidentiality**

**Privacy** generally means that information related to a reported incident will only be shared with a limited number of individuals “who need to know” the information in order to assist in the review, investigation and/or resolution of the incident. While not bound by confidentiality, these individuals will be discrete and respect the privacy of all individuals involved in the process. If a decision is made to pursue disciplinary action against a Respondent, information related to the report will be shared with him or her.

When the parties involved are students, information regarding a reported incident will not be shared with either party’s parents or guardians unless the party has signed a waiver that complies with FERPA or there is an articulable threat to the health or safety of the party or other individuals.

While a Responsible Employee cannot offer confidentiality to an individual who discloses an incident of Prohibited Conduct, the Responsible Employee will maintain the privacy of all individuals involved by sharing the information related to the report with only those who “need to know” as outlined above.

**Confidentiality** means that information shared with a designated campus or community professional will only be disclosed with the individual’s express written permission, unless there is an imminent threat of harm to self or others. An individual can seek confidential assistance and support by speaking with specifically designated Confidential Employees and using the Confidential Resources identified in this policy.

### **B. Requests for Confidentiality**

When a Complainant requests that their name or other identifiable information not be shared with the Respondent or that no formal action be taken, the Title IX Coordinator, in consultation with the Title IX Team, will balance this request with the University’s obligation to provide a safe and non-discriminatory environment to the Complainant and the rest of the University community.

If the University honors the request for confidentiality, it will still take all reasonable steps to investigate and respond to the report, but its ability to do so may be limited based on the nature of the Complainant’s request. At times, in order to enhance safety and maintain a non-discriminatory environment, the University may not be able to honor a Complainant’s request for confidentiality. In such circumstances, the Title IX Coordinator will inform the victim prior to starting a formal investigation. The Complainant can choose not to participate in the University’s investigation and in such cases the Complainant should understand that the University’s ability to meaningfully investigate the incident and/or pursue disciplinary action against the alleged perpetrator may be limited.

### **C. Records**

The Title IX Coordinator will maintain records of all incidents reported, and all complaints made, under this policy as well as their outcomes in order to track patterns and systematic behaviors. Reports that end at the Initial Review stage or that are resolved through Voluntary Resolution are not part of a student’s conduct file or an employee’s personnel record. Affirmative findings of

responsibility in matters resolved through the Investigation and Determination of Responsibility process are part of a student's conduct record and an employee's personnel record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student's conduct record or an employee's personnel record. Student conduct records are maintained in the Office of Student Affairs in accordance with the University's document retention schedule. Personnel records are maintained in the Office of Human Resources in accordance with the University's document retention schedule.

#### **D. Release of Information**

If a report made under this policy discloses a serious and immediate threat to the University community, University Police will issue a timely warning notification to protect the health or safety of the community as required by the Clery Act. This timely warning notification will not include any identifying information about the Complainant.

Pursuant to the Clery Act and state law, anonymous statistical information regarding reported criminal incidents must be shared with University Police for inclusion in the daily crime log. This information will also be included in the University's Annual Security Report and annual report to the Maryland Higher Education Commission. The University may also share aggregate and not personally identifiable data about reports, outcomes, and sanctions.

All University proceedings are conducted in accordance with the requirements of Title IX, the Clery Act, FERPA, state and local law, and University policy. No information, including the identity of the parties, will be released from such proceedings except as required or permitted by law or under University policy.

### **IX. REMEDIAL AND PROTECTIVE MEASURES**

The University may implement remedial and protective measures for the parties involved and/or for the larger University community in order to enhance safety and protect the integrity of the University's process. The University will offer reasonable and appropriate measures to protect the parties and facilitate their continued access to University employment or education programs and activities. These measures may be both remedial (designed to address an individual's safety and well-being and continued access to educational opportunities) or protective (involving action against another individual). Remedial and protective measures may be temporary or permanent. Remedial and protective measures are available regardless of whether the Complainant pursues disciplinary action through the University's process or reports the Prohibited Conduct to law enforcement.

The Title IX Coordinator, in consultation with the appropriate University officials, has the discretion to determine the appropriateness of remedial and protective measures, including any Interim Measure. All individuals are encouraged to report concerns to the Office of Gender Equity about the adequacy of remedial and protective measures or failure of another person to abide by any restrictions imposed by a remedial or protective measure. Violations of remedial and protective measures, including any Interim Measures, will be addressed under this policy and the University will take appropriate, responsible, and prompt action to enforce such measures.

#### **A. Types of Remedial and Protective Measures**

Remedial and protective measures may include, but are not limited to:

- Issuance of a No Contact Order
- Access to counseling services and assistance setting up initial appointments, both on and off campus
- Arranging for medical services
- Academic accommodations and support services such as tutoring

- Academic schedule modification, including the ability to drop a course without penalty or to transfer sections
- Work schedule or job assignment modifications
- Residence modification
- Escort to assure safe movement to and from classes, activities, and/or job site.
- Limiting access to certain University facilities
- Restrictions on campus activities
- Voluntary leave of absence
- Pre-disciplinary leave (with or without pay)
- Suspension from employment
- Any other measure that can be tailored to achieve the goals of this policy

#### **B. Interim Suspension or Separation from University**

In certain circumstances, the alleged Prohibited Conduct may require the University to place a student or student organization on interim suspension or impose leave for an employee. Pending the resolution of an incident of Prohibited Conduct, the individual or organization may be denied access to campus, campus facilities and/or all other University activities or privileges for which the individual or organization might otherwise be eligible.

***Students.*** The Title IX Coordinator or designee shall make a request for interim suspension to the Office of Student Affairs. Upon receipt of the request, the Dean of Students or designee shall hold a show cause hearing to provide the Respondent with the opportunity to demonstrate why the interim suspension should not be imposed. Such interim suspension and/or loss of privileges, including removal from housing, is to become immediately effective without prior notice, if the Dean of Students or designee determines that the continued presence of the student or student organization on the University campus poses a substantial and immediate threat of harm to the safety or well-being of an individual, the broader University community, or to the performance of normal University functions.

***Faculty and Staff.*** The Title IX Coordinator or designee may request that an employee be suspended or assigned other duties pending the outcome of the investigation and determination of responsibility of an incident of Prohibited Conduct. Such request shall be made to the Provost (faculty) or Vice President of Human Resources (non-faculty staff) and proceed in accordance with the appropriate faculty handbook, collective bargaining agreement, and/or applicable employee policies and procedures.

#### **X. ACADEMIC FREEDOM AND FIRST AMENDMENT PROTECTION**

This policy shall not be interpreted to infringe on First Amendment rights, academic freedom or freedom of expression. The fact that speech or a particular expression is offensive is not, standing alone, a sufficient basis to establish a violation of this policy. In order to violate this policy, the conduct must be sufficiently serious to interfere with an individual's ability to participate in employment or educational programs and activities from both a subjective and objective perspective. Prohibited Conduct, as described in Section V of this policy, is neither legally protected expression nor the proper exercise of academic freedom.

## **XI. AMNESTY FOR ALCOHOL AND DRUG POSSESSION AND CONSUMPTION**

Sometimes students may be reluctant to seek help after experiencing Prohibited Conduct, or reluctant to help others who may have experienced Prohibited Conduct because they fear being disciplined for underage alcohol consumption and/or consumption of other drugs. To encourage reporting, a student who reports Prohibited Conduct, either as a Complainant or third party witness, will not face disciplinary action for their consumption of alcohol or drugs at or near the time of the incident. Because alcohol and drug misuse can negatively impact a student's physical and emotional well-being, the University may still refer a student for health or medical intervention related to their alcohol or drug use.

## **XII. CONSENSUAL RELATIONSHIPS AND PROFESSIONAL CONDUCT**

Sexual or other intimate relationships between a faculty or staff member and a student or between supervisor and employee, while not expressly forbidden, are generally deemed very unwise. Power differences between faculty and students or between supervisors and supervisees make the subordinate's voluntary consent to even an apparently consensual relationship questionable. Romantic or sexual relationships where there is a differential in power or authority produce risks for every member of the University community and undermine the professionalism of faculty and supervisors. Individuals should also be aware that these relationships may impact third parties based on perceived or actual favoritism or special treatment based on the relationship. Wherever a power differential exists between persons who are romantically or sexually involved, the parties must realize that if a complaint alleging Prohibited Conduct is subsequently filed, mutual consent will not necessarily be accepted as a reasonable defense.

## **XIII. FALSE REPORTS**

The University will not tolerate false reporting of incidents. The University takes the accuracy of information very seriously as an accusation of Prohibited Conduct may carry severe consequences for the accused. A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated accusation of Prohibited Conduct. However, when a Complainant or third party witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, the Complainant or third party witness may be subject to disciplinary action, including termination of employment or expulsion from the University. Not only is it a violation of this policy to make an intentionally false report, but such conduct may also violate state criminal statutes and civil defamation laws.

## **XIV. EDUCATION, TRAINING, AND PREVENTION PROGRAMS**

The University is committed to preventing Prohibited Conduct on its campus. To that end, the University provides regular and ongoing prevention education and awareness programs. Incoming students and new employees are exposed to primary prevention and awareness programs as part of their orientation. Current students, faculty, and staff receive ongoing training on how to prevent Gender-Based Harassment, Sexual Misconduct, Relationship Violence, Stalking, and related Retaliation. The Title IX Coordinator is responsible for overseeing the University's training and educational programs related to this Policy. To learn more about the University's prevention programs or to request training, please contact the [Office of Gender Equity](#) at 301.687.4733 or [titleix@frostburg.edu](mailto:titleix@frostburg.edu).

As part of the University's commitment to provide a learning and work environment free from Prohibited Conduct, this policy will be disseminated widely to the University community through email communication, publications, websites, new employee orientations, student orientations, and other appropriate channels of communication.

## **XV. PROCEDURES FOR RESOLVING REPORTS OF PROHIBITED CONDUCT**

### **A. Complaints against Students and Employees**

The University offers a number of options for resolving incidents of Prohibited Conduct against students and employees in a prompt, fair, and impartial manner. All reported incidents of Prohibited Conduct are investigated and resolved under the oversight of the Title IX Coordinator or designee and use a preponderance of evidence standard (*i.e.*, it is more likely than not that the alleged misconduct occurred). If the Prohibited Conduct occurred during the course and scope of a student's employment at the University, the student-employee may be subject to sanctions both in connection with their employment and in connection with their student status. The procedures for investigating and resolving reports under this policy can be found on the [Office of Gender Equity](#) website.

### **B. Complaints against Third Parties Not Affiliated with the University**

The University does not tolerate Prohibited Conduct by third parties when the third party has been brought into contact with members of the University community through a University program or activity. While individuals who are not students or employees of the University are not subject to discipline under the University's internal process, the University will provide a prompt and equitable response that is consistent with this policy and the law. For example, the University may refer the matter to local law enforcement or may deny the third party access to University's buildings or grounds.