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September 2022

## 2022-2024 MHEC Sexual Assault and Other Sexual Misconduct Incident Report Guidelines

These updated Guidelines are provided by the Maryland Higher Education Commission to aid in mandated reporting as required by [Md. Education Article, Section §11-601].

Please take time to read this entire set of guidelines to ensure your institution is compliant with what is required for submission.

### Changes and Updates for the 2022-2024 cycle

- Alterations and updates to the Google Form
- ***Significant*** (format and validation) alterations to the Incident Report Excel sheets<sup>1</sup>
- FAQs in Guidelines
- Clarification on State and Federal Law alignment

New materials/content in guidelines is marked with underlining, bolding and other notations (e.g., New).

### Key takeaways

- The Incident Report should include all incidents in which a student is involved in an allegation of sexual assault or sexual misconduct, regardless of whether a formal complaint is filed. If a formal complaint is filed, the Report asks for data regarding the final action within the appropriate system of the institution.
- Definitions of Sexual Assault I, Sexual Assault II and Other Sexual Misconduct as established by MHEC must be followed for this reporting, regardless of federal law or institutional policy.
- All institutions are required by State law to provide a report aggregating the data they collected regarding sexual assault and other sexual misconduct incidents and complaints made to the institution, including:
  - Type(s) of misconduct,
  - The outcome of each incident,
  - Disciplinary actions taken by the institutions,
  - Accommodations made to the students in accordance with institutional sexual assault policies, and
  - The number of reports involving non-student perpetrators.
- The incident reporting focuses on incidents involving students (as complainants or respondents); therefore, institutions should not include incidents that involve solely staff, faculty, or other non-student members of the campus community.

### Key Definitions

**Types of sexual assault and other sexual misconduct. These must be adhered to for the purposes of**

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<sup>1</sup> The changes to the incident data report include: different manner to collect institution name, cycle dates, other information; validation of data entered; additional tab for “unclassified” incidents.

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**State reporting. They may or may not align with federal definitions or institution definitions but, by law, institutions must adhere to these definitions when reporting to MHEC.**

**Sexual Assault I** - non-consensual sexual intercourse: 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.

**Sexual Assault II**—non-consensual sexual contact: 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.

**Other Sexual Misconduct** - Incidents should be included in this category if they relate to any other category of violence or misconduct as defined by the institution. These may include dating violence, domestic violence, sexual exploitation, sexual harassment, sexual intimidation, sexual violence, and stalking.

The remaining definitions provided serve as an aid and reference for institutions; specific definitions at your institution may differ. Please adhere to the definitions MHEC has provided when reporting the incident data.

#### **Additional Definitions**

**Accommodations:** Steps the institution may take to respond to the needs of the person reporting the incident, even if no formal process is conducted. There are a number of possible accommodations, but often include academic or housing adjustments, access to counseling, and medical services.

**Alternative resolution:** Alternative resolution is a voluntary, structured interaction between or among affected parties that is designed to allow a respondent to accept responsibility for misconduct and acknowledge harm to the complainant. At most institutions, the Title IX coordinator retains the discretion to determine which cases are appropriate for alternative resolution.

**Complaint/ Complainant:** A formal report completed by the student regarding the alleged incident; the complaint can begin a proceeding under the campus student disciplinary system or trigger a formal investigation by the institution. Not all incidents result in complaints. The Incident Log and Report record incidents, including those that result in formal complaints. The student filing the complaint is considered the Complainant.

**Disciplinary action:** Action taken by the institution toward the person(s) found to have violated the institution’s sexual assault and sexual misconduct policies. Actions can include expulsion or suspension.

**Incident:** An allegation of sexual assault or other sexual misconduct involving a student which is reported or referred to the institution’s Title IX coordinator. An incident does not have to result in a formal complaint or investigation to be reported in the Log or corresponding Report.

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***\*\*new for 2022-2025\*\**** *Note: MHEC anticipates that institutions are providing data on all reported incidents involving students but is aware that this can be difficult when little additional information is shared with the Title IX officer and/or the victim is unresponsive to inquiries. Prompts have been provided to allow Title IX staff to report on these incidents regardless of lack of additional data (e.g., via use of “unknown,” “undisclosed,” “not enough information provided” for some prompts).*

***In addition, for 2022-24 reporting, there is a new, “unclassified” tab*** where institutions can report counts of incidents in which so little information was gathered/provided that the institution cannot classify it in any way.

**Initial assessment/ review/investigation:** Title IX coordinators (or other institutional designees) are required to complete an initial, preliminary inquiry on all reported incidents. These initial steps can include reaching out to the victim, gathering information and data, conducting interviews, and taking additional actions to determine what occurred. Not all initial assessments/reviews/ investigations result in formal complaints.

**Non-student perpetrator:** A person who is alleged to have committed a sexual assault or other sexual misconduct who is not a student of the same institution as the person who made the incident report. This can include individuals such as visitors to the campus, faculty, or staff members.

**On-campus:** A term used to help classify the location of the reported incident. These are locations within the campus property, including dormitories and other on-campus student housing, classrooms, academic spaces, athletic complexes, parking lots, green spaces, libraries, Greek Life or other designated on-campus housing for specific student groups, and branch campuses. **This definition does not align with Clery reporting but must be adhered to for State reporting. On campus is more broadly defined (e.g., definition does not consider the control of building).**

**Off-campus:** A term used to help classify the location of the reported incident. These are locations outside of the campus property including the adjacent community, off-campus housing, **personal housing of the student (family home)**, and off-campus fraternities or sororities, This could also include a foreign location (e.g., students studying abroad).

**Outcome:** The result of a reported incident regardless of whether the reported incident results in a formal complaint. Outcomes can be determined by the institution’s student conduct or disciplinary process as well as criminal prosecution.

**Respondent:** An individual who is reported to have committed act(s) of sexual assault or other sexual violence.

**Responsible employee:** Any college or university employee who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty.

**Retaliation:** Using 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.

**School-sponsored off-campus activity/event:** A term used to help classify the location of the reported

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incident. These include activities sponsored or sanctioned by the college or university. These activities occur off the campus.

**Sworn law enforcement officers:** Persons formally authorized to make arrests while acting within the scope of explicit legal authority.

**Unclassified incidents:** Incidents unable to be classified as Sexual Assault I, Sexual Assault II or Other Sexual Misconduct as reported to Title IX staff or other appropriate institution designee.

**\*\*\* NEW \*\*\*Explanations of State Law and Federal Title IX regulations**

**State Law - Background**

The Maryland law that informs these reporting requirements was passed in 2015 and took effect on July 1<sup>st</sup> of that year. In response, The Maryland Higher Education Commission (MHEC) prepared a series of guidelines for the survey and the incident data, a data collection reporting requirement/worksheet and a sample model survey in order to ensure compliance with the law and the preparation of a useful and information statewide report.

**State Law – Adherence**

Regardless of changes to federal law or institutional policy, institutions **MUST** adhere to the guidance and reporting requirements put forth by MHEC.

Most importantly, this means that the definitions (see guidelines) of Sexual Assault I, Sexual Assault II and Other Sexual Misconduct established by MHEC must be followed in reporting regardless of Title IX requirements.

**\*\*New for 2022-2024\*\* Note: As stated in prior guidance, the changes to the Title IX regulations that went into effect in August 2020 do not preclude MHEC from continuing to collect the same data of incidents of sexual assault and other sexual misconduct as MHEC has collected in the past. Similarly, the activities taking place within the federal government between 2022 and 2024 regarding Title IX should not change any aspects of what institutions are required to report for State reporting.**

Please contact Barbara Schmertz (see contact information below) should you have concerns about the effects these regulations on your institutional reporting.

**Background**

Since 2015, all higher education institutions are required by statute (Md. Education Article, Section §11-601) to conduct and report the results of a sexual assault campus climate survey, and to provide institution-level data on incidents of sexual assault and misconduct. The first statewide report summarizing these reports was completed in November 2016.

The cycle of reporting spans two years, and legislation requires institutions to administer a climate survey every two years and collect incident data for a two- year period. Surveys are to be administered every two years, and incident data is collected for a two-year period. Results from the current cycle of reporting are due in 2024.

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All higher education institutions are required to compile a Sexual Assault and Other Sexual Misconduct Incident Report. The next incident report sheet, containing data collected for the 2022-2024 academic years, must be submitted to the Maryland Higher Education Commission (MHEC) on or before June 1, 2024. MHEC is required to compile a report aggregating institution-level data on the Incident Report to report to the State by October 1, 2024.

The guidelines are meant to aid institutions in the implementation of the 2022-2024 cycle of the Incident Report and Incident Log. These guidelines were originally created through close collaboration with a workgroup representing all segments of higher education in Maryland, and have been strengthened by feedback from institutional representatives. The workgroup's expertise in Title IX, student affairs, and survey administration was invaluable in ensuring that the processes and guidelines reflect a wide range of concerns affecting all institutions of higher education. The guidelines serve to help answer questions and address concerns related to the statute's requirements in an effort to help ensure that the data from the Incident Report can be useful to students, colleges and universities, and the public.

Recognizing the unique needs of individual campuses, these guidelines should not be considered exhaustive. Campuses should rely on their institutional experts (e.g. faculty, Title IX officers, and legal counsel) for guidance on the collection of incident data. Please note, however, that the definitions provided in this guidance document apply to all campuses, and any questions about how to interpret those definitions should be submitted to MHEC for resolution.

This document provides a set of guidelines to aid in the completion of the Incident Log and submission of the Incident Report. Please note that several changes to the Log and Report have been put in place for this cycle; these are the result of institutional feedback and reporting improvements. The Incident Report should include all incidents in which a student is involved in an allegation of sexual assault or sexual misconduct, regardless of whether a formal complaint is filed. If a formal complaint is filed, the Report asks for data regarding the final action within the appropriate system of the institution.

### **The Log and the Incident Report**

The framework for reporting incidences involves two parts: the Incident Log and the Incident Report. The Incident Log provides a standard format for collecting and recording information about specific incidents. Specific data from the Incident Log should be used to prepare the Incident Report. **The Incident Log should NOT be submitted to MHEC.**

Only the Incident Report should be submitted. Please note changes have been made to both since the 2022-2024 reporting cycle.

### Completing the Incident Log and Report

- **\*\*\*New this year:** The Incident Data form has been adapted with the following:
  - The first tab – “Fill\_Out\_Reporting\_INFO” offers drop down institution list and date fields (see snip)

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5									
6	<b>Institution - Select from Drop Down</b>								
7	<b>(click on cell to get drop down list):</b>								
8	<b>Report Start Date (MM/DD/YYYY):</b>								
9	<b>Report End Date (MM/DD/YYYY):</b>								
10									

- There are validation checks throughout the report- entering incorrect data prompts warnings

1	Total number of incidents classified as Sexual Assault I reported to Title IX staff or other appropriate institution designee.		4						
2	How many incidents were reported:								
	by victim								
	by witness(es)								
	anonymously								
	by responsible employee(s)								
	other								
	<b>SUM</b>		0	Total Incidents Reported Do Not Equal Total Nun					
3	How many Sexual Assault I incident reports occurred								

- All incidents reported should involve one or more students. Incidents involving only faculty and/or staff, which would be subject to employee disciplinary systems, should not be reported.
- In preparing the materials for the June 1, 2024 deadline, institutions should begin the Incident Report reporting cycle at the time the last reporting cycle ended (e.g., if the 2020 cycle ended on May 22, 2022, the 2022 cycle should begin May 23, 2022) Please refer to your previously submitted report for the start date of this current cycle. The beginning and end date must be clearly indicated on the Incident Report.
- Each institution may determine, based on its institutional calendar, the appropriate date in spring 2024 for the report to end. Recommendations include such key dates as commencement, end of finals, or end of classes. Regardless of the date selected, institutions must ensure all data is prepared for submission on or before June 1, 2024, as mandated in the legislation. The end date selected must be clearly indicated in the Incident Report.
- Your institution’s Title IX coordinator should play a crucial role in supplying the data required for the Incident Log and Incident Report.
- To complete the Incident Log, please use the text fields and pull-down menus provided. The prompts on the Log correspond with the responses required in the Incident Report that will be submitted to MHEC.
- Please note that additions to the Log have been made, both in columns to report and in menu selections to choose from.
- In complex cases such as when an alleged sexual assault is tied to a dating violence incident, the Incident Log and corresponding Report should reflect only one category (Sexual Assault I, Sexual Assault II or Other Sexual Misconduct). Please prioritize in order of incident (e.g., the aspect of the alleged incident which is defined under Sexual Assault I would take priority over aspects of the alleged incident that are defined under Sexual Assault II or Other Sexual Misconduct). This mirrors the Hierarchy Rule, as described in the Violence Against Women Reauthorization Act of 2013.
- All efforts must be made to protect student privacy in the collection and reporting of data.

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- Please consult the data definitions provided in these Guidelines as you complete the Incident Log and Incident Report. **Regardless of federal or institutional definitions, please use the definitions provided by MHEC.**

### Data Collection and Submission Timeline

- The Incident Report must be submitted in the Excel worksheets provided by the Commission and is due on or before June 1, 2024 (June 1 is a Saturday so please submit no later than June 3). Submit this report via the Google Form link provided <https://forms.gle/NgDQ2j1XRJNGHwxdA>
- The point of contact for the Commission will include those who submitted the 2024 reports. Please contact Barbara Schmertz at [Barbara.schmertz@maryland.gov](mailto:Barbara.schmertz@maryland.gov) to update or alter the institution's point of contact.

If you have additional questions or concerns regarding these guidelines or the collecting and reporting of the incident data, please email Dr. Schmertz at [barbara.schmertz@maryland.gov](mailto:barbara.schmertz@maryland.gov).

### \*\*\* NEW\*\*\*FAQs

#### **Who should be included in the counts of incidents of Sexual Assault I, Sexual Assault II and Other Sexual Misconduct?**

All incidents involving allegations of sexual assault or other sexual misconduct involving a student which is reported or referred to the institution's Title IX coordinator should be included in the reporting. An incident does not have to result in a formal complaint or investigation to be reported in the Log or corresponding Report. Incidents in which little information is provided must still be reported. See response about visiting student for more information.

#### **How should Title IX report in complex cases (student was stalked and assaulted)? Should each incident type be reported? If not, how should it be reported?**

In complex cases such as when an alleged sexual assault is tied to a dating violence incident, the Incident Log and corresponding Report should reflect only one category (Sexual Assault I, Sexual Assault II or Other Sexual Misconduct). Please prioritize in order of incident (e.g., the aspect of the alleged incident which is defined under Sexual Assault I would take priority over aspects of the alleged incident that are defined under Sexual Assault II or Other Sexual Misconduct). This mirrors the Hierarchy Rule, as described in the Violence Against Women Reauthorization Act of 2013.

#### **How should a Title IX office report an incident when there is little detail about the type of incident? When there is so little information, how can Title IX classify it as a Sexual Assault I, II or Other Sexual Misconduct?**

It is possible that incidents reported to Title IX officials are made in such a manner that the Title IX office cannot provide specific data for reporting. The reporting sheet allows institutions to report otherwise unclassified incidents within the overall institution totals.

#### **If the complainant is a visiting student, how should an institution report this, if at all?**

An institution should report complaints from visiting students in the same manner as other students at the institution.

#### **How should I report cases that extend over two cycles?**

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Include incidents that were under investigation in the last cycle in this current cycle. In addition, include incidents that are still under investigation as of the 2024 reporting cycle's end in the data as well. MHEC ensures that this "double counting" is clarified in the state reporting that is submitted to the legislature and posted on the agency website.

**What should I do if I have questions on reporting or data submission?**

Contact Barbara Schmertz if you have questions about your data. MHEC recognizes that incidents of sexual assault are, by their nature, complex and may not comport well to the data reporting requirements.

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