



U.S. Department  
of Transportation



**2010–2011 Academic Year Annual Report**  
**on**  
**Sexual Harassment and Sexual Assault at the**  
**United States Merchant Marine Academy**





**SUPERINTENDENT  
UNITED STATES MERCHANT MARINE ACADEMY  
KINGS POINT, NEW YORK 11024-1699**

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## **Foreword**

The Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (P.L. 110-417) requires that the United States Merchant Marine Academy (Academy) conduct an annual assessment to determine the effectiveness of the Academy's policies, training, and procedures with respect to sexual harassment and sexual violence prevention. The Act requires, among other things, a survey on sexual harassment and sexual assault every other year. In the survey administered to the midshipmen, faculty, and staff in the spring of 2010, midshipmen reported instances of sexual harassment and sexual assault in the previous year that had not otherwise been reported to the officials of the Academy. Students and faculty also reported a lack of confidence in the leadership of the Academy to foster a climate that is intolerant of sexual assault and harassment. Following the last Report to Congress for Academic Year 2009-2010, the leadership of the Academy has undergone key changes to address those concerns in a timely and effective manner.

As a result, the Academy and the U.S. Department of Transportation have undertaken key initiatives in order to ensure that its programs, training, and processes create a safe and welcoming environment for all members of the Academy community. We also are devoting additional resources to the critical area of training and education for midshipmen, faculty, and staff and to bolstering the Academy's victims support network.

We take these responsibilities very seriously. For over half a century, the Academy has trained men and women to serve their country and to assume leadership positions in the maritime industry and in the armed services. The U.S. Department of Transportation, the Maritime Administration, and the Academy are committed to creating a living and working environment that upholds the Academy's honor code, ensures safety, and respects the dignity of every midshipman, faculty member, and staff member at the Academy.

## Executive Summary

The Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (P.L. 110-417), requires the Academy to prescribe a policy and conduct an assessment at the Academy during each Academic Year to determine the effectiveness of sexual harassment and sexual violence prevention policies, training, and procedures. In even-numbered academic years (*e.g.*, APY 2010-2011), the Academy performs a self-assessment that includes an analysis of data and reporting of changes to policies, training, and outreach material. The following report is based upon Academic Program Year (APY) 2010-2011.

In APY 2010-2011, the Academy had six reports of sexual assault involving midshipmen. A detailed breakdown of these incidents is provided in the body of this Report. In cases where the alleged perpetrator is a midshipman, the Academy's policies provide for appropriate administrative consequences regardless of the outcome of any criminal investigation. In addition, during the same period, there were also three informal complaints of sexual harassment, all investigated and resolved short of any additional administrative action taken.

In administering the Academy's Sexual Assault and Harassment Prevention and Response Program, the U.S. Department of Transportation, the Maritime Administration, and the Academy have multiple existing policies to address assault, harassment, and confidentiality. However, based on past self-assessments and recommendations for improvements, a revised sexual assault policy, Superintendent's Instruction 2010-05 (Instruction), was implemented during APY 2010-2011. Although beyond the period of this report, the policy has subsequently been updated in August 2012 to adopt a restricted/unrestricted policy similar to the military service academies in which a victim may report an instance of sexual assault and not initiate an investigation (restricted report).

In addition to on-campus education and training, midshipmen are required to complete creditable sea service in order to be eligible for the Merchant Marine Officer License exam. At-sea training places midshipmen in a different environment requiring additional sexual harassment and sexual assault prevention training. During APY 2010-2011, the sea-year sexual harassment and sexual assault training was updated to enhance its effectiveness and midshipmen's understanding of reporting procedures. In the event of an emergency at sea, midshipmen are trained to contact specific personnel at the Academy using a code word. Once alerted, Academy personnel arrange for the midshipman to expeditiously leave the ship and return to the Academy.

These comprehensive initiatives, which were first outlined in the APY 2009-2010 Report to Congress, are some of the foundational elements for the Academy's program for prevention of and response to sexual harassment and sexual violence involving midshipman or other Academy personnel going forward.

In executing the plan, the Academy hired a Sexual Assault Response Coordinator (SARC) with duties similar to the SARCs in place at the other military service academies. The SARC reported onboard on April 22, 2012. In addition to the SARC, other key legal and civil rights positions have been filled which will prove invaluable in administering the program, investigating incidents of reported sexual assault and providing the necessary support for victims.

Moving forward the Academy has also contracted with the Defense Manpower Data Center (DMDC) to conduct the midshipmen surveys for APY 2011-2012. DMDC commenced surveys in May 2012 and returned in November 2012 to complete the survey capturing the midshipmen who were at sea when the initial survey was administered in May. DMDC is scheduled to provide the results of the survey to the Academy in March 2013.

This Report represents the second self-assessment of the sexual harassment and assault program at the Academy. The Academy is still in the process of implementing a more robust program as envisioned in the action plan set forth in the APY 2009-2010 Report to Congress and has made substantial progress.



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## **Legislative Requirement**

This report is produced in compliance with the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (P.L. 110-417), title XXXV – Maritime Administration, section 3507.<sup>1</sup> The Act requires an annual assessment at the United States Merchant Marine Academy (USMMA or Academy) to determine the effectiveness of the policies, training, and procedures of the Academy with respect to sexual harassment and sexual assault involving its personnel.

In odd-numbered academic years (*e.g.*, APY 2009-2010), the annual assessment consists of the Academy’s self-assessment and an anonymous survey of midshipmen. In even-numbered years (*e.g.*, APY 2010-2011), the Academy performs a self-assessment that includes an analysis of data and reporting of changes to policies, training, and outreach material. This assessment did not involve conducting a survey and is the second self-assessment since implementation of the Duncan Hunter Act’s requirements.

## **Existing Policies, Procedure and Processes**

The policies related to prevention of sexual assault and sexual harassment listed below were in place during the reporting period. These policies are available to midshipmen and Academy personnel through the Academy’s intranet.

- Superintendent’s Instruction 2005-2013, “Statement of Student Rights under the Family Educational Rights and Privacy Act (FERPA)”
- Superintendent’s Instruction 2006-2008, “Policy Against Harassment, Sexual Harassment, or Discrimination”
- Superintendent’s Instruction 2006-2010, “Confidentiality at USMMA”
- Superintendent’s Instruction 2006-2011, “Policy Against Sexual Assault”
- Superintendent’s Instruction 2010-2005, “Policy Against Sexual Assault”

A revised sexual assault policy, Superintendent’s Instruction 2010-2005, was implemented on August 2, 2010. This policy superseded Superintendent’s Instruction 2006-2011, “Policy Against Sexual Assault.”

The term “sexual assault,” is defined in Superintendent’s Instruction 2010-2005 as:

“Sexual assault” refers to sexual intimacy forced or threatened on one person by another, including: rape; forcible sodomy; assault with the intent to commit rape or sodomy;

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<sup>1</sup> Relevant text appears in Appendix A.

indecent assault; and other unwanted sexual touching or contact. Psychologically pressuring an individual for sexual favors, or any attempt to take advantage of an individual under duress or incapable of making a decision on his or her own is a direct violation of the policy. This includes situations in which an individual is under the influence of alcohol, drugs and/or prescribed medications. By definition, sexual assault is a crime of violence.

Current sexual assault prevention policy requires quarterly sexual assault prevention training that includes a combination of modes of training to include but not limited to: training to students by the Sexual Assault Response Coordinator (SARC), professional sexual assault prevention speakers, local rape crisis center prevention training, and on-line prevention training. Furthermore, policy information and reporting points of contact are posted in bulletin boards in each barracks floor.

The term “sexual harassment” is defined in Superintendent’s Instruction 2006-2008 as:

**Sexual Harassment.** For the purposes of this Instruction, sexual harassment is defined as any unwelcome sexual advance, request for sexual favors, or unwelcome verbal or physical conduct of a sexual nature that occurs in the workplace or on campus, where:

- i) Submission to such conduct is made either explicitly or implicitly a term or condition of a person’s career or Regimental duties; or,
- ii) Submission to or rejection of such conduct by a person is used as a basis for career or Regimental decisions affecting that person; or,
- iii) Such conduct has the purpose or effect of unreasonably interfering with an individual’s work and academic performance; or,
- iv) Such conduct creates an intimidating, hostile or offensive working and duty environment.

### ***Sea-Year Policies***

Both Academy policy and Federal law require midshipmen to complete creditable sea service in order to be eligible for the Merchant Marine Officer License exam during their First Class Year. Sea service requirements vary by major, but in general require at least 300 days at sea, often served on U.S. and foreign flagged civilian vessels.

As part of the at-sea training, midshipmen are informed that most companies have a zero tolerance policy for sexual assault and sexual harassment and have established written procedures defining harassment and discrimination, explaining how to report such incidents and describing discipline to which harassers and discriminators are subject. Midshipmen are urged to become familiar with policies at the company where they are placed. During this period of report, the sea-year sexual harassment and sexual assault training was enhanced to improve its effectiveness and midshipman understanding of procedures.

In the event of an emergency at sea, midshipmen are trained to contact specific personnel at the Academy and, in the event their communications are being monitored, use a code word to communicate their situation. During the period of report, the code word procedure was revised.



Once a midshipman contacts the Academy, the Academy immediately arranges for the midshipman's safe return to the Academy. Going forward, the Academy SARC will provide victims with resources to assist them physically and mentally, and serve as a liaison with the shipping company to monitor how the complaint is handled and ensure appropriate action is taken. The Academy is creating a database of policies from each company.

## **Reported Sexual Assault and Sexual Harassment Offenses**

In APY 2010-2011, the Academy had six reports of sexual assault involving midshipmen. Five were referred by the Academy to law enforcement for investigation and one was self-reported by the accused midshipman to the Academy. In three of the cases referred by the Academy, the victims declined to provide incidents specifics and there was insufficient evidence to proceed with criminal charges. The two other cases referred by the Academy were investigated but were closed with no charges being filed. The one case where the accused midshipman self-reported to the Academy, an out-of-state grand jury was convened but no indictment was returned.

Reporting of sexual harassment is approached differently than the reporting of sexual assault at the Academy. Superintendent's Instruction 2006-08 suggests, if appropriate, resolution of sexual harassment at the lowest interpersonal level. Midshipmen are not required to confront harassment personally and may elect to resolve the matter by making an informal or formal complaint. In APY 2010-2011, there were three informal complaints of sexual harassment, and all were investigated and resolved without any additional formal administrative action.

Sexual assault is one of the most underreported crimes in the United States. Research indicates that only a fraction of sexual assaults that occur each year are ever reported to law enforcement by victims.<sup>2</sup> This reporting behavior is mirrored at military service academies. The Academy survey data generated during APY 2009-2010 indicated that midshipmen were not reporting incidents and lacked confidence in the reporting system.

The Academy's 2010 updated policy on sexual assault is aimed at greater sexual assault prevention, encouraging increased reporting of sexual assault, improving response capabilities for victims, and encouraging victims to participate in law enforcement actions, if they so desire. The increase in victim reporting behavior since the 2009-2010 reporting period suggests that education and awareness are allowing victims to feel comfortable in reporting the crime. The survey planned for APY 2011-2012 by the Defense Manpower Data Center will provide further insight into trends in reporting.

## **Disposition of Completed Investigations**

Of the six reported sexual assaults, five were referred by the Academy to law enforcement for investigation and one was self-reported by the accused midshipman to the Academy. All of the law enforcement activities were completed during the reporting period. In three of the cases referred by the Academy, the victims declined to provide incidents specifics and there was

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<sup>2</sup> Chamberlin, Linda. 2006. Assessment for Lifetime Exposure to Violence as a Pathway to Prevention, National Online Resource Center on Violence Against Women. Accessed February 3, 2012.

insufficient evidence to proceed with criminal charges. The two other cases referred by the Academy were investigated but were closed with no charges being filed. The one case where the accused midshipman self-reported to the Academy, an out-of-state grand jury was convened but no indictment was returned.

Incident	Victim	Subject	Investigation	Result
1	Midshipman	Midshipman	Referred	No charges filed
2	Midshipman	Midshipman	Referred	Victim declined to provide specifics
3	Midshipman	Midshipman	Referred	No charges filed
4	Midshipman	Midshipman	Referred	Victim declined to provide specifics
5	Civilian	Midshipman	Grand Jury	No indictment
6	Midshipman	Civilian	Referred	Victim declined to provide specifics

**Table 1: Disposition of Completed Investigations**

The Academy’s policy on sexual assault, Superintendent’s Instruction 2010-2005, did not provide for restricted reporting. However, this policy was updated in August 2012 to adopt a restricted/unrestricted policy similar to the military service academies in which a victim may report an instance of sexual assault and not initiate an investigation (restricted report). Although a restricted report does not generate an investigation, the victim is still provided medical care, counseling, and support services that are critically important following an incident.

## Plan of Action

During APY 2010-2011, the Academy continued the implementation of prevention initiatives that were first outlined in the APY 2009-2010 survey and Report to Congress. The areas identified for improvement and immediate attention in the APY 2009-2010 report relate to:

- Climate
- Reporting of incidents of sexual assault and harassment
- At-sea protocols
- Midshipman awareness, prevention, and training
- Support network and intervention
- Program effectiveness assessments
- Faculty and staff gender diversity
- Staff awareness, prevention, and training.

These comprehensive initiatives are the foundation for the Academy’s program for prevention of and response to sexual harassment and sexual violence involving cadets or other Academy personnel going forward. The Academy is fully engaged and moving forward purposefully to implement the action items derived from each of the areas of improvement.

The Academy has hired a SARC with duties and responsibilities similar to the SARCs at other military service academies. The SARC reported aboard on April 22, 2012, and has been responsible for moving a number of actions forward to completion. These actions include: identifying and training victim's advocates; educating a network of students against sexual assault; establishing a 24/7 helpline; developing and implementing sexual harassment and assault training programs; and providing updated training to midshipmen Human Relations Officers. A thorough review of the Midshipmen Honor Code and Regulations as they pertain to sexual harassment and assault has been completed and final revisions are expected to be approved in the 2<sup>nd</sup> quarter of Fiscal Year 2013.

In addition to the SARC, other key legal and civil rights positions have been filled which will prove invaluable in administering the program, investigating incidents of reported sexual assault and providing the necessary support for victims. An attorney with significant higher education experience is now in a permanent position at the Academy as the legal counsel. The U.S. Department of Transportation detailed a civil rights specialist to live temporarily at the Academy, who provided Equal Employment Opportunity (EEO) training to the Federal employees and consulted on policy development and diversity recruitment. A permanent Civil Rights Specialist for the Academy reported for duty in September 2012 and will be responsible for providing ongoing EEO training, conducting bi-annual workforce analyses and reviewing and revising, if necessary, outreach and recruitment initiatives to further workforce and midshipmen diversity.

A committee of Academy and U.S. Department of Transportation personnel updated the sexual harassment and sexual assault policies. The updated policies include both restricted and unrestricted reporting options. The revised policies have been implemented from the start of the APY 2012-2013. In addition, the at-sea component of midshipman training has included updated sexual assault/sexual harassment training, with a revised code word procedure and improved procedures for returning midshipmen to the Academy and providing them with support.

The Academy has contracted with the Defense Manpower Data Center (DMDC) to conduct the midshipmen surveys for the Academy's 2011-2012 report to Congress. DMDC conducted surveys in May 2012 and returned in November 2012 to complete the survey capturing the midshipmen who were at sea when the initial survey was administered in May. DMDC is scheduled to provide the results of the survey to the Academy in March 2013. The Academy may also retain DMDC to conduct focus groups with midshipmen.

The Academy continues to focus on educating its community on diversity, harassment and sexual assault issues. The Academy's Human Relations Committee, which facilitates the dissemination of information aimed at increasing awareness of human relations issues among members of the Academy community, meets monthly and recently sponsored informational programs for midshipmen, faculty and staff for Sexual Assault Awareness Month. The Academy and the Maritime Administration have taken a leading role in organizing the annual Women on the Water Conference, held every fall. Finally, a task force has been formed to engage with the Ship Operators' Cooperative Program to assess best practices for addressing harassment and assault on commercial vessels.

## **Conclusion**

The Academy is still in the process of implementing a more robust program as envisioned in the action plan set forth in the APY 2009-2010 Report to Congress and has made substantial progress.

**Appendix.** Excerpt from the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (P.L. 110-417)

**SEC. 3507. ACTIONS TO ADDRESS SEXUAL HARASSMENT AND VIOLENCE AT THE UNITED STATES MERCHANT MARINE ACADEMY.**

(a) **REQUIRED POLICY.**—The Secretary of Transportation shall direct the Superintendent of the United States Merchant Marine Academy to prescribe a policy on sexual harassment and sexual violence applicable to the cadets and other personnel of the Academy.

(b) **MATTERS TO BE SPECIFIED IN POLICY.**—The policy on sexual harassment and sexual violence prescribed under this section shall include—

(1) a program to promote awareness of the incidence of rape, acquaintance rape, and other sexual offenses of a criminal nature that involve cadets or other Academy personnel;

(2) procedures that a cadet should follow in the case of an occurrence of sexual harassment or sexual violence, including—

(A) a specification of the person or persons to whom an alleged occurrence of sexual harassment or sexual violence should be reported by a cadet and the options for confidential reporting;

(B) a specification of any other person whom the victim should contact; and

(C) procedures on the preservation of evidence potentially necessary for proof of criminal sexual assault;

(3) a procedure for disciplinary action in cases of alleged criminal sexual assault involving a cadet or other Academy personnel;

(4) any other sanction authorized to be imposed in a substantiated case of sexual harassment or sexual violence involving a cadet or other Academy personnel in rape, acquaintance rape, or any other criminal sexual offense, whether forcible or non-forcible; and

(5) required training on the policy for all cadets and other Academy personnel, including the specific training required for personnel who process allegations of sexual harassment or sexual violence involving Academy personnel.

(c) **ANNUAL ASSESSMENT.**—

(1) The Secretary shall direct the Superintendent to conduct an assessment at the Academy during each Academy program year, to be administered by the Department of Transportation, to determine the effectiveness of the policies, training, and procedures of the Academy with respect to sexual harassment and sexual violence involving Academy personnel.

(2) For the assessment at the Academy under paragraph (1) with respect to an Academy program year that begins in an odd-numbered calendar year, the Superintendent shall conduct a survey, to be administered by the Department, of Academy personnel—

(A) to measure—

(i) the incidence, during that program year, of sexual harassment and sexual violence events, on or off the Academy reservation, that have been reported to officials of the Academy; and

(ii) the incidence, during that program year, of sexual harassment and sexual violence events, on or off the Academy reservation, that have not been reported to officials of the Academy; and

(B) to assess the perceptions of Academy personnel of—

- (i) the policies, training, and procedures on sexual harassment and sexual violence involving Academy personnel;
- (ii) the enforcement of such policies;
- (iii) the incidence of sexual harassment and sexual violence involving Academy personnel; and
- (iv) any other issues relating to sexual harassment and sexual violence involving Academy personnel.

(d) ANNUAL REPORT.—

(1) The Secretary shall direct the Superintendent of the Academy to submit to the Secretary a report on sexual harassment and sexual violence involving cadets or other personnel at the Academy for each Academy program year.

(2) Each report under paragraph (1) shall include, for the Academy program year covered by the report, the following:

(A) The number of sexual assaults, rapes, and other sexual offenses involving cadets or other Academy personnel that have been reported to Academy officials during the program year and, of those reported cases, the number that have been substantiated.

(B) The policies, procedures, and processes implemented by the Superintendent and the leadership of the Academy in response to sexual harassment and sexual violence involving cadets or other Academy personnel during the program year. (C) A plan for the actions that are to be taken in the following Academy program year regarding prevention of and response to sexual harassment and sexual violence involving cadets or other Academy personnel.

(3) Each report under paragraph (1) for an Academy program year that begins in an odd-numbered calendar year shall include the results of the survey conducted in that program year under subsection (c)(2).

(4) (A) The Superintendent shall transmit to the Secretary, and to the Board of Visitors of the Academy, each report received by the Superintendent under this subsection, together with the Superintendent's comments on the report.

(B) The Secretary shall transmit each such report, together with the Secretary's comments on the report, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.